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International Court of Justice

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for the

S S of the NSDAP

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When on February 27, 1933, the German Reichstag was consumed by fire, the Nazis willed that out of those flames the 1,000 years' Third Reich should be born. When a little more than 12 years later, all of Germany was drowned in an ocean of flames, that Reich vanished into rubble and ruins.

Both of those historic events were followed by trials. Their meaning was and is to determine those responsible for those two crimes of human history.

The German Supreme Court did not solve that task. It is true that it acquitted with remarkable braveness, as Mr. Jackson has stated, the indicted Communists, but it failed to determine and certainly to sentence those who were really guilty who hired the unfortunate tool, van der Lubbe, and who performed the deed with him. Thus, under the impact of public opinion, the truth has been muzzled and has been concealed by the Nazi Government. Formal justice has been satisfied. The culprit had been sentenced, but that Divine power, Truth, and the deepest human insight, they remained hidden. They alone had been able to open the eyes of the German people at that time and had the power to hold it back from the abyss.

Now this high Tribunal, this Court of the World, faces the task to pass judgment, whose guilt were that world conflagration. Who was responsible for the destruction of foreign lands and finally for the infernal downfall of our German Fatherland? And again there exists the danger that this Court too should pass merely a formal verdict, naming guilty ones -- but that the deepest and last truth should remain hidden by the power of psychosis, which in accordance with the law of psychology and psycho-analysis, would be the natural consequence of the many years struggle between the Hitler regime and the free peoples of the world.

Will this Tribunal be in a position to save, by its verdict, Germany and all the world, from an abyss deeper and

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more horrible than anything experienced before?

This trial is a criminal trial, it is true the greatest as far as the number of defendants and people concerned, and above all, the most important which ever was recorded by legal history, -- but yet, in all its characteristics, a typical criminal trial. Therefore, it followed that Anglo Saxon legal principle which governed the Charter, which was reaffirmed during the public proceedings, that the prosecution had to collect and to present only those factors which could discriminate, never those that could excuse the accused. Effectively, the prosecution is supported by the mass psychosis to which all the witnesses of the greatest "cause celebre" of world history are subject, for reasons which international scientists particularly Le Bon, have given in detail. Openly and cheerfully I confess that in the course of the defense which I conducted, I did not use the corresponding principle of painting black white. I too was endangered by the possible mass suggestion exerted by those hundreds thousands of voices which reached me from the internment camps, and I was tempted to defend at any price, -- losing by that, basis of facts, as they actually were. This result shows already the dangerous reaction brought about by such a mass accusation, and its political consequences.

I am most thoroughly convinced that by such black white painting the High Tribunal would have been betrayed in its search for the real truth. I did not see my task in doing so, although the principles of the charter would have given me the right of doing so. In such a trial concerned with the very basis of humanity, with the demonstrating of innocence and guilt, with the fate of the German people and the future of the world, it cannot be left to the cleverness of methods in the contradicting use of prosecution and defense to expect the Tribunal to decide that the truth might be situated in between. It could not be the task of the defense to gain tactical successes by emphasizing

the one and suppressing another complex - nay, incorruptibly we have to find clarity, - Clarte', as demanded by the fanatic seeker for truth Henry Barbusse. That is the rule in accordance with which I selected my witnesses - I particularly remind you of Reinecke and Morgen, the evidence of whom I shall evaluate later.

It was my endeavor to assist the Tribunal in ascertaining the historic truth.

By doing so I was guided by the simple and therefore beautiful German medieval proverb "Those things that happened can not be reversed."

That word means not only the tragic nature of all that occurred based on the impossibility to reverse it, - there is even a deeper sense in it:

Past events do not stand nor tolerate a retrospective study; that means no deed can correctly be grasped and understood if speculated upon ex post. No, one has to look at it as it offered itself to the contemporaries at the time of its performance, from the beginning to the end.

One has to examine all circumstances surrounding the deed and the person who accomplished it as well as the psychological situation at the time of its performance. The judges must familiarize themselves most thoroughly with the personality of the perpetrator to judge the extent of his guilt.

This is equally true for this trial. Nations judge another nation, the family of peoples judges one people which has brought deep suffering to the world, a state which has committed crimes against humanity. In the organization there have been indicted huge units, large sectors of the German people have been put on the dock, and therefore it seems necessary that the judges of these millions of people acquaint themselves most thoroughly with the lives, the knowledge, the hopes and beliefs of these masses at the very moment when the ideas and accomplishments of National Socialism were effective and its criminal excesses were beginning. Hence, the judges of the four largest and for the decision of this world war most important nations of all the world will have to make the attempt to decide -- just as in the case before any normal jury - "How did it come that the deed was performed? In what

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situation did the defendants find themselves at that time? Which speculations and sentiments did drive him to commit the act? Did he have at all the intention of doing anything illegal? is it possible that he himself was deceived? Was he at all able to recognize the illegal nature of his doing - and if he learned of it only gradually -- was he in a position to adjust his action in accordance with that insight?" It is extemely difficult even for the judge in a normal trial to free himself from the ex post reflection and to evaluate correctly the circumstances of the deed, the milieu of the deed and the personality of the one who performed it. How exorbitant are the demands for justice put before the judge when he has to judge people who have transgressed just against his, the judge's family. Every nation contributing to this jury has suffered tremendous damages by the crimes of the Nazi regime for which the millions of members of the organizations have to account for now, But in accordance with the statements made by Justice Jackson in his opening speech, I venture to hope that you, High Tribunal, will succeed in performing this titanic undertaking to be free of feelings of revenge and rather to seek justice and nothing but justice. Will you, as non-Germans, who have not personally lived through the unique historic phenomena of a mass-psychosis and a tyranny of continental extent, be able at all to grasp and to explain to yourself how something of that kind could happen? Can you imagine that crimes were not committed, that they were not consciously supported by them, nay, not even known by them?

The Charter rightly stated and the Tribunal acted accordingly, that it could not be the task of this court to ascertain which inner causes had led to this war, with or without justification. The decisive question is only: Was it an aggressive war? Nevertheless, even in the case of the individual defendants proof was admitted as to how the historic development psychologicall conducted them since the first World War to this new murder of nations. With even far greater justification one has to demand that in the case of establishing the guilt and the crime of the organizations just in their very beginnings one should examine the historical background, the political total situation in and around Germany, The masses have no clear thoughts or sentiments, they are moved by

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dark emotions, emanations of a phenomenon which the scientists have called "mass-soul". It is formed by the pictures and promises offered by their leaders.

One of the prosecutors in his final plea against the individual defendant stressed how gigantic their guilt and the consequences of their acts could become just by the clever use of the masses, by seducing the very souls of the people, by the glistening magic of slogans and the promise of an utopian development. Do not these very words give the best proof for the fact that the masses of members desired only the good and the non-criminal?

Already in its very beginnings, even before 1933, the principles of the SS ere identical with the program of the NSDAP. Not only before this Tribunal one has discussed the question whether that program and the means and methods of its realization were criminal. This problem concerned the public, the authorities of the German Republic and the best heads and hearts of our people throughout many years before 1933. Were it motives of a criminal nature when the masses followed our politicians who did not promise them easy plundering expeditions at home and abroad, but rather work and bread, when he rallied them to national unity as contrasted to the pellmell of a parliamentary system scorned by forty-one parties, a democracy which killed itself by weakness and half measures?

It is the German peoples deep tragedy that it could not sublimate its insight that it came late when the fortunes of the world were distributed by strengthening and improving its recognized position in the world of intellect and applied sciences. The German is a romantic - particularly in the field of politics. This romanticism circles around vague concepts of fate and doom and the dream of ancient power in the "Holy Roman Empire" of Germans" of a thousand years ago. This belief in destiny has been supported by an absolutely incorrect description of German history for more than a hundred years and therefore

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one needed only a skillful sorcerer who again sent millions of German youth into death and destruction by suppressing the real facts.

But the great seducer, Hitler, had not gone so far yet.

At first, the protestations of peaceful intentions domestically were more important than those taught foreign countries which did not yet matter then. Due to the fault of all large political parties and their armies, as well as the weakness of the republican administration, the inner political life had changed to an ever-increasing degree into a real state of war in the streets. Nevertheless, the secret parliamentary elections were carried through without terror or deceit. Through these elections the citizen could observe a steady increase of strength of the extreme parties of the Right and the Left. He could not consider it a crime to join the extreme party of the Right, the NSDAP, or its SS, who in contrast to the SA which ruled the streets, mainly was concerned with the protection of the speakers during the fraternal warfare carried on among the political adversaries of those days.

Every German who lived through these days knows with what tension the problem was discussed, whether the NSDAP and its formations planned any undertakings which had the character of high treason or which aimed at the revolutionary change of the government. In 1923, in the early days of the party, Hitler had attemped a coup d' etat which had failed. Now since many years he advocated "legality". When in September, 1930, three young officers of the 100.000 men army were indicted before the German Supreme Court for treasona activities by having planned nation-socialist cells in the army, Hitler as a witness testified under oath that revolution was one of the spirit and that he aimed to seize power by legal means. This news went through all papers in bold lines and in that manner, it entered both the heads of enemies and the followers of Hitler. Dr. Kempner, then Oberregierungsrat in the Prussian Minis of the Interior, now a member of the AmericanProsecution, was one of the few who considered that oath perjury. He submitted to his Ministry a detailed report, concluding that the NSDAP

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was guilty of high treason. But even that seaker of truth had to admit in this description of the situation as it existed then (Volume XIII, No. 2, June,1945, "Research Studies of the State College of Washington" Page 120) that even high ministerial officials of the German Republic did not consider Hitler a liar at that time, 1930. That was how Hitler's clever propagan influenced even such critical, hostile circles. Should one be surprised the the masses of the SS put their trust in him. Incidentally, there were only a few thousand of them then. Yes, matters went even farther. When Dr. Kempner the Nazi Pary in 1930, the highest state attorney with the supreme court decided in August, 1932, that there existed no reason to prosecute or dissolve it. (Compare Kempner's study, Page 133) What were the result caused by such opinions voiced by the highest authorities of the republic as far as the masses were concerned. They were expressed by everincreasing election returns for the Nazis.

But the most striking feature is — andthat is of such a decisive importance for the inner attitude of those thousands who joined the SS just after January 30, 1933 — that Hitler actually did not break his oath. Although it is quite true that Dr. Kempner's prophecies in regard to the further development was correct in general — this one recognized only much later — he was at the very beginning mistaken with his predictions. The Nazi party actually remained a legal one, it seized power not by a coup d' etat, but Hitler was asked to form a cabinet by Hindenburg in accordance with parliamentary rules.

What is it that those ministerial officials might have said who had refused believing the pessimist, Dr. Kempner? Is it not likely that they gloried that they had been right? Was it not that their conscience was quieted? After all, that man Hitler was not as bad as people had said. Now, after having entered the government he would become a moderate — as every opposition after gaining power. And was it not true too that

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that the great mass of Hitler's followers was proof that they had seized power by peaceful means after an election fight of almost American proportions? Considering that period of time one question inevitably arises; was the mass of Hitler's followers, or the mass of fair-men, able to recognize that that point of the Party Program which probably was the clearest one, anti-Semitism, contained a criminal element?

Anti-Semitism is not a new phenomenon, it is also, if one studies its intellectual bases, nothing typically German. In my opinion it is based on the feeling of inferiority of the average man, on his lack of self-trust caused by the Jews' superiority in certain intellectual fields. Equally it is true that the refutation of anti-Semitism by all civilized nations and individuals is nothing new; it culminated in the Pope's statement "The one who discriminates between Jews and other human beings does not believe in God and is in conflict with Divine Commands." But the enigma which we cannot pass by when discussing the question of criminality is that there exists at all a Jewish problem which is not based on religious differences, but on race. Yes, the enigma is that there still exists a race problem which leads continuously to conflicts in our modern world which has grown so small. Isn't puzzling that the Polish Cardinal Hlond who, went through all the horrors of the Nazi regime, only a few weeks ago tried to justify to some extent Polish anti-Semitism by referring to the leading role played by Jews in the Polish government? Isn't it puzzling that even today, after the horrible experiences of the Hitler regime the Arabs act against the Jews in their traditional homeland, Palestine, and particularly against their influx and their acts of violence should result from that opposition? The situation is similiar in Europe. Race problems, not only anti-Semitism still exist in all other corners of the globe.

All of them cry out for a just solution and it can be found

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only in granting equal rights to all races. Some progressive nations have made anti-Semitism a criminal offense. But was it criminal when the society, the state, under the influence of those mad illusions, at that time tried solutions prohibiting the mixture of races and their influencing public life? Again much has to be explained on the basis of events of those days. The poor example given by a few Jewish immigrants from Eastern European countries as the notorious swindlers Barmat and Kutisker, stood in opposition to that of the great German Jew and the unforgotten statement Walter Rathenau who long ago had issued to his brethren a call to their moral consciousness. The situation offered the basis for a collective mood for a mass psychosis against the Jews supported by the external economic calamities as it reoccurs always in the course of great political and social upheavals, and as it threatens just in the cause of this present trial to create again a new collective injustice against certain categories of people. The demand for the legal carrying through of this anti-Semitic principle could not have been a crime as such because it appeared that its application guaranteed by the state would be carried out without hate and personal revenge. To some extent it was merely the transfer and an acharonistic exaggeration of the American legal regulations concerning immigration quotas to the European, the German scene,. Hitler's most trusted confident, Rauschning, reveals in his book, "Hitler Speaks", Page 91, that his inner-most intention was hate; the masses could not ascertain that. Concealed remained that hate which emerged from the feeling of inferiority of the one who recognized the superiority of the penetrating intellect over dark impulses. The SS-men learned of anti-Semitism only as the other side of race eugenics which was emphasized. By a skillful use of the historic emotions difficult to understand for the non-European and which were connected with the terms "Ordensprinzip", "Maennerbuende", and "Sippengemeinschaft" — I refer to documents SS Nos. 1, 2, and 3, and the twisted romanticism in modern clothes to be found there — Hitler endeavored to create in the SS a group of men which by attitude and self-discipline represented an "elite" for pruposes of most intensive breeding of the own people. This tendency though very remote to modern Europeans

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or cosmopolitians, yet might hardly be called criminal -- I am referring to occasional questions asked by the High Tribunal -- and it did exclude automatically an anti-Semitic tendency of the nature of the "Stuermer" or even of the brand of the less vulgar SA. It is significant indeed that the indictment has not charged the SS with one single case of brutality toward Jews before 1933. The so-called "Leithefte", the monthly publicati of the SS, and the evidence given before the Commission by witness Schwal concerning the training of the SS clarify the reserved position of the SS toward the Jewish question. Later it was reffirmed by the non-participation by the SS in the anti-Jewish pogroms of 1938 which I described in other connection. I shall also demonstrate how the atrocities committed during the war against Jews and the mass killings were in conflict with the original tendency of the SS and how they were made possible by direct secret orders of Hitler and Himmler through criminal individuals and groups and how they were kept secret as far as mass of SS members is concerned.

Out of the wealth of points of the Party Program which the SS accepted as a matter of course, I would like to pick out only the elimination of the Versailles Treaty and the demand for living space because those two could be decisive for the later supposed preparation of an aggressive war. The Prosecution stated with not a single word how at so early a stage the mass of SS members could assume that those demands were criminal that means th they should be accomplished by an agressive war.

I have demonstrated how Hitler strengthened the confidence not only of his SS-men by his legal assumption of power but how he acquired the tru of such new men who never had followed him in a criminal road. May I respectfully request the High Tribunal to read the evidence which State Secretary Grauert made before the Commission to learn how a man with the best intentions entered the Hitler administration and the SS and how he left it not before 1936 when he as an experienced legal administrator realized that the suspension of the historic principle of the separation of powers was bound to corrupt the state basically. That thing which he as an expert realized - only in 1936 - remained hidden to the mass.

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For that reason please read the summary of approximately 136,000 affidavits which show why the membership of the General SS increased from 50,000 on 30 January 1933 to approximately 300,000 within a few months.

Hitler's great gamble for power, and with it the tremendous betrayal of the German people, only begins -as paradox as it may sound- after the so-called seizure of power. After one month of triumph over the Chancellory and this parlimentary revolution in the course of which, no doubt, excesses and crimes have occurred with which the mass cannot be incriminated under premeditated planning. The pre-requisite is being created for the final elimination of all opponents: the burning of the German Reichstag. The prosecution does not assert that the German people, the members of organizations, the SS men, knew or even assumed that this arson was decided among the rank of the Nazis and was carried through by the Brown Shirts by using the tool of van der Lubbe. Such an assertion would, of course, be absurd.

In order to understand the mentality of the SS men who, after January 1933, filled the ranks of the SS and formed four-fifth of their strength, one must recall the Reichstag speech of Hitler of the 17th of March 1933. A large part of the opposition was eliminated after the fire by prohibiting the Communist Party and arresting many of their members which was approved by the enraged population because of their alleged participation in the arson involving high treason.

In answer to the demand of Hitler for the creation of an Enabling Law upholding all parliamentary formalities, the Social Democratic members of the Reichstag asserted that this Law was undermining the security of justice.

In view of the true background pictured above it can be considered to be mad devilry when Hitler answered the following in reply:"I really must say that had we not possessed an understanding for justice, then we would not be sitting here and you would not be sitting there....Gentlemen, it would not have been necessary for us to embark on this election, nor would it have been necessary to call in the Reichstag." (Reichstag Protocol 1933, pp 65, 66.)

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But who, gentlemen of the Tribunal, out of the mass of the people, out of the old and new members of the General SS, knew at the time how bluntly Hitler was lying. These men were misled by a cloak of justice with which Hitler veiled himself. Not only with this speech; just consider how the Reichs Court, old, experienced, previously Republican judges, which exacting accuracy during many months of trial until the year 1934 considered the question of guilt with reference to the Reichstag Fire. They found the Communists Torgler, Dimitroff and others innocent; but they sentenced the Communist van der Lubbe and determined publicly the complicity of Communist circles who remained unknown. Did not the mass of SS members, as well as the farthest circles of the German people, have to assume that Hitler had actually saved the people and the State of a violent revolution for which the Communists were blamed at the time? Who, perchance, could possibly learn --as I did being a defense counsel here-- that the indictment which had been prepared for months, even years, against Thaelmann, had to be withdrawn since the evidence material was just not sufficient. These few who then, or soon after, learned or guessed the truth and who, subjected to the ever-increasing danger of arrest, pronounced doubts regarding the authenticity of the official and popular thesis in discussions with friends and acquaintances, these few knew that, confronted with the appearence of justice, tirelessly pursued by propaganda, were not given credibility by the masses.

The masses appreciated that in view of this threat of the State the so-called "enemies of the State" were made harmless in time. Seen from this point of view even the concentration camps appeared justified. But I shall come back to that later. All these were harsh and, in many cases, even criminal measures which partly also incriminate SS members but not the entire mass of the SS.

However, we must not leave one thing out of sight: the use of force typical in a revolution by their members did only occur after Hitler's acquisition of power. The cunning thing in that connection was that these excesses -such as arrests and bodily injuries- which were carried through by members of Nazi formations- to the least part by members of the SS- were carried through with the realization that they were necessary in order to safeguard and defend the power which was legally acquired against attacks or threats.

This revolutionary mood, after the acquisition of power, created by the deception of the masses regarding the true events which, indeed, must be considered something unique in history, bears the typical trends of all revolutionary excesses: Under the cover of factual or alleged idealistic motives -such as love of the fatherland, love of humanity- crimes are being committed. Just consider, gentlemen of the Tribunal- since we are not sufficiently removed from the many revolutions of the modern age- just consider the French revolution: what amount of crimes were committed under the slogan of, "Equality, Liberty and Brotherhood !" Considering the experiences of modern psychology it seems to me to be quite out of the question that mass movement can be unleashed or incited with inferior moral aims. The mass cannot consciously be led to crime. Even Gustave le Bon inclines to this opinion. In the shadow of high ideals of the masses crimes frequently occur, but then, they are only caused or executed by the few who deceive the masses about the true reasons and events. This thought, in my opinion, is the central point with regard to the question of concentration camps and cruelties committed therein and the responsibility in that regard of the mass of the SS, a question which is to be dealt with later.

The concept of faith too belongs to such ideals which incite the masses. One must be acquainted with the German mentality in order to be able to gauge what immense possibilities of shameless misuse of hundreds of thousands were offered to the psychopathological misleader of a people --Adolf Hitler, with this concept. We know how much the word "Faith" means to a German on the basis of his education, influenced by romantic and retrospective contemplation of history. Tacitus praised the ancestors of the Germans in that respect. Hitler is utilizing this weakness of the Germans and thereby chaining hundreds of thousands, even millions to himself and his fate. We know what is possible and understandable in private life is a basic wrong in the

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State. By that I mean the absolute binding to a human being. The philosopher Karl Jaspers has the following to say to this question in his work "The Question of Guilt".

"The faith of followers is an unpolitical relation within narrow circles and among primitive conditions. In a free State there prevails control and change of all people."

The German Socialist Bebel expressed it once in the following manner:

"Mistrust is a virtue of Democracy".

These views are taken as a matter of course for the people of the world. For a people , however, who wanted to create a modern state according to retrospective historical dreams, they are a new revelation. Quite justifiably Jaspers is seeing a double guilt.

"First the fact of generally, politically submitting oneself to a leader without reservation, and secondly the evaluation to whom one subjects oneself. Even the atmosphere of such subjections means a collective guilt."

Jaspers means by that expressly a political guilt, but not a criminal guilt.

In the individual case, however, a criminal guilt can arise out of this fate for the individual perpetrator. That becomes clear when listening to the secret speech of Himmler at Posen before SS Obergruppenfuehrers of the home country and of the rear army area. That was only late in the war - October, 1943 (PS 1919, SS Document 98). After various statements regarding obedience and the possibility to refuse execution of orders, he says quite clearly: "The man, however, who becomes unfaithful and be it only in his thoughts, will be dismissed from SS and he, Himmler, will see to it that he disappears from life.

This, Gentlemen of the Tribunal, is an important fact with reference to the question of guilt in the individual case, and with reference to the question, to what extent coercion and order during the war eliminates the guilt and thereby the criminality of certain individual persons or subordinated groups. This is additional to the question of refusal of military service and its consequences according to military law.

Of what supernatural, yes, even devilish power, this tie of faith was, Himmler, with his own personality gives the best example in his relation to Hitler during the last days of the war.

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The Swede Count Bernadotte describes, from his own experience, in his book "The Curtain Falls" how Himmler could not make the decision to save the German people from its destruction by the ceasing of hostilities, in spite of his very clear realization of the consequences. Bernadotte admits that it was due to the fact that even in this hopeless situation he would not violate the faith to Hitler. We also know how at all times and with all peoples it was this faith that made soldiers keep going until the last drop of blood during heaviest battles. That was just as true of the men of the Waffen SS who thereby won the respect of their opponents in this war. And from these two examples we see how this hypnotic word, "faith", determines criminal madness as well as the highest virtue of the soldier at the same time.

So far to the question of how far the SS man had knowledge of the points of the program of the Party -- that is, if he at all knew them sufficiently, and that is indeed doubtful according to the affidavits of 136,000 SS men, and how he viewed the ideal of this organization. But did not the Nazi leaders intend war from the very beginning? Mr. Jackson asserts this, and I answer: According to the knowledge that we have today, I admit it, yes! But how could the SS man know about it?

The Prosecution does not say why the chain of an Army comprised of professional soldiers to a peoples Army should mean the planning of an aggressive war. Switzerland, an example of a country with a people's army, did not wage wars for a long time. Was the advocation of physical training and sport activities of youth to be a camouflaged plan for military education? Mr. Jackson failed to give us the proof for that assertion. The training of the General SS was not military. Maneuvers as practiced with the SA were completely lacking, and - a typical example- the riding units of the SS who were numerically smaller than those of the SA, did not even give their members the right of a riding certificate, as was the case with the SA.
(Testimony of Woikowsky-Biedau before the Commission)

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We know today that Hitler wanted war, it particularly arises from the intimate conversations with Rauschning and when considering the total events, but Gentlemen of the Tribunal, note: It is an ex post realization.

It would have been a fruitless undertaking, especially in view of the position in which the German people found themselves after the first World War to present a new war as "less disgreeable or bad" or even as a "noble and necessary undertaking," just to use Justice Jackson's expression. Hitler, who you can accuse of everything, but certainly not of not knowing the facts of mass psychology, has again and again before and after 1933 pointed out that he wanted peace, peace and nothing but peace. He pointed out that he experienced the horrors of war on his own body, that war always proved results, damaging the most valuable assets belonging to the people of every nation. And only because of that assurance, he won ever-increasing numbers of the German people for himself and his ideas. With propaganda for war, however carefully conducted, he could have never achieved it.

The rearmament was demonstrated to the German people as merely being a confirmation of the world of peace and as being a defensive measure against the non-disarmament of other nation and against possible attempts to interfere with the peaceful re-building of Germany. The building of the West Wall confirms it, and so do many utterances of foreign military experts such as for instance the English Brigadier General Fuller. The high-ranking main defendants and many witnesses including the certainly reliable witness, Gisevius, have confirmed that not even in leading circles a planning of aggressive war was discussed. This applies to the SS in a stronger sense. The entire training within the organizations was always headed with the aim that the execution of the party program be carried through in a legal and peaceful manner. Not only was there no psychological preparation for war carried through in all the SS organizations, but to the contrary, it was the Reich's will for peace that was continually confirmed.

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In this connection I would like to ask the High Tribunal to read the document SS 7o, 71, 73, 75, 76, 77, 78, 79, 8o, 81, 82 from the years 193? to '35 particularly an article from the "Black Corps" of 1937 entitled "The SS Does Not Love War", the public declaration of the Austrian Bishops of March 31, 1938, stating that they were convinced that Nazism did not mean war, and the secret decree of the Fuehrer of August 17, 1938, re-affirming that the General SS as a political organization of the NSDAP was not in need of military formations and training and that it was unarmed.

The lack of psychological preparations for war among the German people and equally among the SS never became as clear both to domestic and foreign observers as by the reaction of the mass of the people to the Munich Pact. The masses including the SS who formed the cordons was not aimed at that Adolf Hitler who had enforced the surrender of the Sudetenland but rather that Hitler and even more those foreign statesmen who had saved the peace

For the German people and the soldiers did not want war, and - this must be stated at this historic spot for the sake of historic truth - when war came in 1939 they accepted this fate not with cheering jublience as in 19?, but with solemn silence, in their majority victims of the erroneous belief that leadership hat not desired that war.

However it would mean to give up all dignity and to lose face if I should try to deny that the young German, particularly in the SS, saw his ideal in those manly virtues, in the same virtues of standing up and the resolution to dare anybody, virtues cherished by other people, too. However, the SS-men possibly over-emphasized those virtues in a manner which not always was good or wise. But none of the old soldiers, students, and farmers who had joined the SS imagined that war would in anyway resemble that what Hitler aimed at. If Hitler ever had dared to speak to those men about attacks on other peoples with whom he had just recently concluded solemn pacts of friendship, or

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of Einsatzkommandos in foreign lands he never had found any followers apart from a few desperate souls. I must assume that that war which the tall, blond, and perhaps intellectually not too alert, typical SS-man did not fear the war as it had been conducted in his imagination since centuries by his ancestors; in the long run,it ended always with the appeal to destiny, the great gamble of the gods. Certainly it is true that we have to free the Germans and particularly the young ones of this atavistic longing - and I dare say that in this regard I am now more optimistic for my fellow country-men than for many another people - but war as such of which it appears that it cannot yet be uprooted (the Kellog Pact and modern international law do not condemn war as a means of defense and self-preservation) that war is something essentially different than that high treason, that betrayal of world peace, that attack and robbery coupled with exterminatin ideas, which was invented by Hitler.

In addition to the general aims and tendencies of the General SS with which the Prosecution charges it from the very beginning and due to which it declares it criminal, there is above all one event which is said to throw light like flash on the criminal character; the killings which have been performed on June 3o, 1934.

In regard to the happenings which took place in Germany on June 3o, 1934, and the following days, the taking of evidence has rounded out the following picture (witnesses Hinderfeld, Grauert, Joehnk, Reinecke, Eberstein; SS-affidavit No. 7o, Kampp-Franz, SS-Affidavit No. 3 Schmalfeld and SS-Affidavit No. 119-122; Summary of the mass declaration) In the morning of June 3o, the General SS was alarmed practically everywhere in the Reich. Wherever there were police or army barracks they were assembled there or in other public buildings as schools, on June 3o, and sometimes even July 1. In most cases, it remained entirely inactive; only in some places the polic used it to assist them

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in the confiscation of arms in SS offices. In Berlin this task was carried through by the police division for special purpos wecke by itself, while the majority of the General SS which was concentrated in the barracks of the Leibstandarte at Lichterfelde was used during the course of June 30 to form cordons at the Tempelhof Airfield. For that purpose, the General SS which as a rule was unarmed was furnished weapons by the police or army. After Hitler's arrival by plance from Munich the units of the General SS marched back to the barracks and immediately had again to surrender their arms (SS-Affidavit No.3 Schmalfeld).

Nowhere were arrests or executions carried out by units of the General SS (Witness Eberstein). In Munich one of the hot spots of the so-called Roehm-Putsch, Hitler himself arrested the participating SA leaders. In the same manner he arrested Roehm and his inner-circle at Wiessee at the Tegernsee. Roehm and the other SA-leaders subsequently were transferred to the Stadelheim prison and were executed there the same day by members of the Leibstandarte (Witness Joehnk).

The arrests in Berlin, the other center of the revolt, were carried out in accordance with orders given by Goering through the Gestapo. To sentence the arrestees there was formed a court martial in which the Reichswehr was represented too through the Wehrkreisbefehlshaber or the Stadtkommandant. Before the execution was performed through a Kommando of the Leibstandarte, the verdict of the court martial was rendered. The executions were performed on grounds of the barracks of the Leibstandarte at Lichterfelde. From the apartments at the Finkensteinallee one could view the execution grounds. Not all members of the SA who came before the court martial were executed. However, a number of SS-members who had mistreated arrestee were shot (Witness Joehnk, SS-affidavit No.3 by Schmalfeld).

The members of the General SS were only subsequently acquainted with the reasons for their being called out. The same applied to the members of the Leibstandarte. During the days before the 30th of June, however, there were various rumors circulating which largely dealt with the attitude of the SA. But the mass of the SS was only informed through the announcements of the press and radio on the 30th of June. They thereby received the same official picture as the German people and the whole world! (witness Hinderfeld)

Doubt as to the accuracy of this description could not arise in the general SS then or in the following years. Even highly placed SS leaders, as the testimony under oath of the SS Obergruppenfuehrer von Eberstein and of SS-Brigadefuehrer Grauert, proved, were informed by Himmler or Goering himself to the effect that Roehm had made an attempt of a putsch with the SA. The just-mentioned manner of the committment of the General SS on the 30th of June further excludes the possibility that the SS participated in the violations which were carried through outside the judicial framework.

As to the forming of opinien of the mass of members of the SS, apart from their knowledge regarding the complete insignificance of their own committment, the telegram of thanks of Reichspresident von Hindenburg, (SS Document No.74) and Hitler's statement before the Reichstag on the 13th of July, 1934, were of decisive importance. There the Chancellor of the German Reich gave a justification for the declaration of the state of emergency and determined numerically the circle of the executed conspirators. In particular, it is essential to point out Hitler's statement where he says that the excesses committed going beyond the necessary measures for the squashing of the revolt would be sentenced by regular courts. No misgivings regarding the legality of the executions could arise with the members of the SS and the men of the Leibstandarte, nor any doubts about the seriousness of the announcement that illegal violations were to be punished by the courts.

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The details which Hitler issued regarding this alleged high and state treasen, especially the description of the conspirators' connection with foreign countries and the attempts against his own life, were absolutely astonishing. (SS Document 106) They were not senseless at all, since it is a historical fact, even valid in modern times, that new governments before their consolidation are being vitally threatened, especially by opponents and counter-revolutionaries who might even come from the rank of their old friends; and therefore, have to safeguard themselves by brutal action.

The fact that as little as possible was thought among the SS regarding the events of the 30th of June, as Himmler stated in Posen, cannot be considered as a sign of a bad conscience. It was a question of tact that one did not unnecessarily speak of happenings in one's own house, that is, quarrels between party formations, which might have a defaming effect on one part so as not to newly break open an old wound.

Finally, as far as the gaining of independance of the SS and their separation from the SA concern, one can only see therein an appreciation of the loyal attitude of the SS and their uncompromising refusal of Roehm's plans, and, at the same time, an intended weakening of the position of power to be given to the Chief of Staff of the SA. We come to the conclusion that the events of the 30th of June, 1934, can, in no way, be given the significance as attempted by the prosecution. In no way were they recognizable for the members of the SS as the beginning of a criminal development.

When considering the ideas and the activities of the SS it is well to contemplate what other momentos contributed to the forming of his opinion.

Thereby, we must honestly start from the fact that unlike an opponent or a then so-ridiculed intellectual of our kind, the SS man did not with a particularly critical mind examine everything that was said about his Fuehrer and about his state.

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but he wanted to believe in something, and this belief, as I shall prove, was not shaken by the surrounding world. The surrounding world, unfortunately, did nothing to shake it.

And what I shall now discuss does not serve to declare others guilty, and to distract from ons's own guilt if it exists. No - these statements are supposed to clarify how we all, the whole world did something - in part, likewise deceived about the true danger; in part in the hope that we would thus best master this danger - which, in its effects on the whole German people, Hitler's followers, and his SS men had to be interpreted as confirmation of the correctness, the legality of his intentions and his deeds.

I can understand that this evidence was declared irrelevant for the defense of the individual defendants, for they are being charged precisely with having deceived the world consciously. Then, one cannot use the conduct of the world as an index for its credulity. In the case of the organizations this problem is different.

The mass of their members, even the mass of their leaders, the Prosecution will not seriously charge with having known of the criminal aims and intentions of Hitler and they will certainly not be able to prove such knowledge. I have just shown how the events up to about 1934/35 had to appear to the SS man. Thus, the objection of the Prosecution that they could not have been strengthened in error, which is worthy of consideration for the principal defendants, does not apply to the organization which I am defending.

What was the situation at that time? (I quote essentially from Jasper's "The Question of Guilt" (Die Schuldfrage), pages 82-83).

"In the early summer of 1933 the Vatican concluded a Concordat with Hitler. Papen conducted the negotiations. It was the first great confirmation of the Hitler regime; a mighty gain in prestige for Hitler.

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All states recognized the Hitler regime. One heard voices of admiration.

In 1935 England concluded the Fleet Pact with Hitler through Ribbentrop.

In 1936 the Olympic games were held in Berlin. The whole world flocked there.

In 1936 the Rhineland was occupied by Hitler. France tolerated it.

In the spring of 1938 Hitler moved into Austria amidst the acclamation - still undeniable today - of the overwhelming part of the population.

In 1938 an open letter from Churchill to Hitler was published in the Times, in which there occurred sentences like this one:

"Should England be overcome by a national misfortune comparable to the misfortune of Germany in 1918, I should ask God to send us a man of your strength of will und of spirit."

How is it possible that in all these years, foreign diplomats and leading men - accompanied respectfully and in confidential conversations by SS men - at party rallies, in the Reich Chancellory, and in the Ministries, shook the hands of murderers and arsonists? What effect did that have to have on the consciousness of the SS man, who considered these hands pure and clean?

The total situation in the years 1933 to 1939 is characterized by Roepke in his book, "The German Question" ("Die Deutsche Frage"), which was published in Switzerland.

"The present world catostrophe is the gigantic price which the world must pay for having been deaf to all alarm signals, which from 1930 to 1939 in increasingly shrill tones, proclaims the hell which the satanic forces of National Socialism were to unleash, at first against Germany itself, and then against the rest of the world. The horrors of this war correspond exactly to the others which the world let pass in Germany while it even maintained normal relations with the National Socialist and organized International celebrations and congresses with them."

At that time the world still considered what happened in another state as an affair which did not concern them. Only as a result of the experience with the Hitler regime and the

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second world conflagration, did the solidarity of the great states and, we hope one day that of the United Nations, see to it that dictatorships and undemocratic methods in all countries do not lay the cornerstone. I should like to interrupt the consideration and evaluation of material with a few statements on the law of the Charter and on the rules of procedure. I did not want to bore the Tribunal with this at the beginning, but first I wanted to create a factual atmosphere in which the legal argument would gain strength. My arguments will be as brief as possible, for much has already been said in this connection by my colleagues, and I fear that more will be said, and the Tribunal knows the memorandum of my colleague Alefisch. I hope that my statements may afterward clarify what I have already discussed, and I hope that they may give insight into the underbrush of the voluminous factual material which I can still offer in the rest period of three hours which was granted me for my speech.

The legal nature of the indictment against the organizations and the possible finding of an organization as criminal must be cleared up. The general statements of the defense regarding the possibility of the organizations' committing offenses are known to the Tribunal. I consider them fitting and correct. And yet one must ask the question: Who is really indicted with the purpose of a statement according to Article 9 of the Charter? Is it really the formations as former legal entities or, is it not rather, in reality, the millions of individual members who, merely represented by one of the principal defendants, and represented by the dead formations, are sitting in the dock? It is the individual members who are indicted. This follows from all reflections which habe been made on the whole complex of questions.

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The Trial will not decide on the fate of the former organizations, which are not alive and can never become dangerous, but only on the fate of the many members. A glance at Law No. 10 and the disastrouns consequences of the declaration of crime confirm this. Declaration of crime creates a previous decision - constituting guilt and unassailable - for possible charges under Law No. 10.

It is true that the principle of opportunity is in effect for subsequent proceedings, to new world conflicts. I cite the remonstrances of the United States because of the internal government conditions in Argentine a few months ago.

Now before I turn to the particularly criminal activites of the SS which the Prosecution has listed,

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that is, it is up to the Prosecution whether it considers it expedient to indict the individual member. But this does not change the basic idea.

The declaration of crime thus bears the character of a prejudicing declaration of guilt for each member of the organization. If the individual is not indicted later, he receives no punishment, it is true; but he is nevertheless a criminal according to legal decision. The character of criminality does not affect the organization as such; but in reality -- since the organization as such no longer exists - exclusively its former members. Before you, Your Honors, the main trial against each individual one of these members is proceeding. The issue is the establishment of his punishable action, "membership". The most important declaration of guilt is made against each individual. The concept of guilt, however, in all civilized states of the world, is always, within the meaning of the law , connected with the individual deed of a person. There has never been guilt of organizations. No one could object to declaring the aims and purposes of an organization criminal if individuals were not affected thereby. But as soon as the declaration of criminality of the organizations is to be the indirect condemnation of individuals, one must conscientiously examine and establish the individual guilt of each individual.

One comes to this conclusion for another reason as well: What does the concept of organization include? That an organization is a union of people is clear. That this union, at least in general outline, pursues unified aims and purposes and has a corresponding constitution should also be clear. Whether it includes the characteristic of voluntariness is, on the other hand, extremely doubtful. No one will deny that the German Wehrmacht was an organization, although there can be no question of voluntariness, not even in the majority of the cases. One may think further of occupational groups, schools, or even compulsory guilds, in which there is no voluntariness of joining, but which are certainly organizations. The Klefisch Memorandum as well as the basic decision

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introduced the characteristic of voluntariness into the terminology. In my opinion, quite correctly. But why? Fundamentally only because otherwise the aftermath of declaring the organizations criminal would appear unjust in view of the consequences for the individual members. What follows from this? Very much. One sees here quite clearly that in reality it concerns not the organizations but the members. The decision of 13 March 1946 considers relevant only the question of whether membership was in general voluntary; it therefore takes into consideration that involuntary members will be affected. In view of the consequences of Law No. 10, this is not reconcilable with the idea of justice.

Constitution, Aims, or Purposes, and Activities of the Organization - whether on a voluntary basis or not - are criminal if they fulfill the conditions of Article 6; that is, if they were aimed at crimes against peace, war crimes, or crimes against humanity. In connection with No.6 of the decision of 13 March, the individual characteristics of Article 6 of the Charter are to be carefully examined here. One should ask, for example, were the Constitution, aims, purposes, or activity of the SS aimed at the planning, preparation, inauguration, or execution of a war of aggression, at the violation of the rules of warfare, or at murder, extermination, enslavement, and so forth?

These latter crimes of Paragraph c of Article 6 of the Charter, however, are punishable only if they were committed in execution or in connection with another crime punishable under the Charter; that is , in connection with crimes against peace or war crimes. This is how the author of the Charter, Justice Jackson, explained it in his statement, which is added to the text of the Charter in the "Department of State Bulletin" of 12 August 1945 on Page 228. ("We have taken another (step forward) in recognizing an international accountability for persecutions, exterminations,

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and crimes against humanity when associated with attacks on the peace of the international order.")

I have already explicitly shown that in the examination of the charges of the Prosecution in connection with Article 6 of the Charter the judgment must adapt itself to the time of the program point in question or of the ostensibly criminal act.

After establishing that the crimes were without doubt committed, the question of whether the organization as such is to be designated as criminal will depend on how many or -- in proportion to the millions of members -- how few SS members took part in these crimes. Did an organization really act or did only relatively few members act, who perhaps-- in order to establish the paradox -- frequently had not even joined the SS voluntarily?

That it must not be overlooked at what period the individual crimes took place the High Tribunal has already affirmed in its decision of 14 January 1946. If at all, then it is quite possible that the organization or a part of it was criminal only at certain periods of time. Forms that were once cast could perhaps appear criminal only through later misuse, although they were originally not destined for it. An axe which is forged never knows when it leaves the anvil whether it will perform useful service for humanity or will one day be misused, as a murder instrument, if only - to follow the metaphor through - with its detached wooden handle.

That such limitations in regard to time and personnel are necessary is shown by the following example: The indictment says on Page 5 that between 1933 and 1935 unsuitable members were expelled. I may add that these were about 50,000, or one-sixth of the membership, who -- this is shown by the most varied testimony and affidavits -- on the basis of their previous political attitude had only sought camouflage, also previously convicted persons and other unreliable elements.

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Even these persons would not be excepted from the indictment and the consequences of the declaration. Such a grotesque result cannot possibly be desired.

Finally according to No. 6 a (3) of the decision of 13 March 1946 the evidence will have to be examined to see how far the knowledge of the individual members reached. This question will be decisive for the judgment on the masses of the SS.

I said before that even if the SS Organization, the no longer existing organization, is formally indicted, the indictment is nevertheless, in effect, directed against each individual member. If now the criminal character of the organization is to be proved through criminal acts of the members, then the member who is supposed to have committed this specific crime, must have an opportunity to answer to you, Your Honors. If he cannot do this, then the Court cannot form an objective picture of whether the accusations are true. Then how will the proceedings be carried out in an indictment according to the Anglo-Saxon group penal law? The leaders and the members are heard in detail on the specific accusations made against them — the Court does not judge on the basis of unfavorable testimony of witnesses without the leaders' and members' of the organization who are personally affected by this testimony having an opportunity to comment on it.

How little the court can base its judgment only on the testimony of witnesses without in concrete cases also hearing the accused person or persons is shown by the astonishing experiment which I undertook with the witness Israel Eizenberg on 7 August 1946 (English Transcript Page 15 283/84). I showed him two pictures from a Prosecution document PS 861 in Polish, Exhibit SS Nos. 2 and 3, from which I cut off the captions under the pictures. The witness called the two men pictured SS men and named their SS ranks. He deduced these ranks exclusively on the basis of the epaulettes and an insigne on his sleeve. The Witness Morgen, whom I examined on 8 August 1946, immediatly recognized as an expert that the men pictured were not wearing SS uniforms.

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and were not SS men. He pointed out that these photographs showed the epaulettes of the police, and on the sleeve the insignia of the police. In the photograph Exhibit SS No. 3 the police insignia can also be clearly seen on the cap: the eagle completely enclosed in an oval wreath of oak leaves. Nowhere is the SS insignia to be seen. All other photos in this book also show only police uniforms and police insignia. But all of this did not strike the witness; he considered these men "SS-men." That was only a minor example of the powers of observation of the witnesses with regard to uniforms.

Please consider further how slight the difference is between the uniform of the SD and that of the SS -- only a small SD rectangle on the sleeve -- and that non-members of the SS wore this uniform (compare the testimony of Dr. Best and Reinecke before the Commission), that precisely in the rear army area it was the police who were employed, while the SS was at the front, that the mass suggestion of the guilt of the SS distorts the memory of the witnesses; then, Your Honors, you will be able to realize the true value of the testimony of non-German witnesses who arbitrarily give "the SS" as the perpetrators of any crimes in the occupied countries.

The incompleteness of a collective indictment, which is raised here for the first time in the long history of law, is based particularly on the difficulty of taking testimony for the accused organization in a fair manner. This difficulty arises of necessity from the peculiar nature of the proceedings, particularly from the fact that it is technically hardly possible, or possible only through proceedings lasting for years, to clear up every concrete charge in a satisfactory manner by hearing the specifically affected members of the organization, and to establish whether each charge is justified or unjustified.

As long as in such a trial it is impossible for the defense immediately to produce each individual member of the organization who is impeached by prosecution witnesses or documents,

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and to have him make a concrete statement as well as to hear further witnesses on this case, this trial remains incomplete and unsuited for a just finding.

It follows of necessity that to a large extent the cases of the prosecution and the defense passed each other without being able to give the Court a picture of the true state of affairs in large fields of the charges. Only thus could the grotesque picture arise that we experienced repeatedly during the defense case; a defense witness described his activity and that of the units and SS men under his command. It covered as large as possible in regard to subject matter and territorial extent, since the Court permitted only a minimum number of witnesses in proportion to the total membership, and any individual testimony of a little man was inadmissable according to the decision of 13 March. The Prosecution would now have had to attempt to break down the testimony of the witness in cross-examination. The surest and simplest method for this would have been to throw doubt on the credibility of the witness by showing, for example, that he himself had committed a crime or that such things had been done by people under his command.

Although the Prosecution had many weeks to examine its records and those of all the allies, which records had existed for months, yes, for years,, and although these 29 witnesses before the Commission and before the Tribunal had held middle, high, and highest positions, the Prosecution could not prove any such thing against them. Is not this fact already the best refutation of the contention of the criminal character of the SS? Is it not symptomatic if the Prosecution did not succeed in accusing or convicting one of the highest generals of the fighting Waffen-SS, a very high fuehrer of the General SS, at the same time Higher SS and Police Leader and Police President - an extremely rare case -- of the third largest German city, a staff officer of the administration of the Waffen SS who was repeatedly in service at the front,

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and two high SS judges of conitting or tolerating crimes? Later on I shall discuss the case of the witness Sievers, the only case which was different. Thus the Prosecution had only one recourse: it consciously brought forward documents or affidavits which were to prove that crimes had been committed but with which, even in the opinion of the Prosecution these SS witnesses themselves had had nothing to do. Nevertheless the Prosecution asked the witnesses whether they knew of the events described therein. Were they thus seeking to discover the truth, for which this taking of evidence was intended, or was further evidence merely to be introduced at a time when the case of the Prosecut ion had already been closed? These documents are for the most part government reports on investigations which have not yet led to any trial or judgment — particularly in the partisan territory in Yugoslavia, which is very difficult to judge. Their evidential value must be very slight.

Can the new documents and affidavits introduced thus in enormous numbers make it possible for the Court to answer objectively the question of whether the deeds actually took place, and thus whether the SS is criminal? Would not the Court have to hear the accused, that is, the SS men, who were mentioned by name in the documents or members or officers of the accused SS units? After the experience with the ability of the witness Eizenberg to distinguish uniforms : is it convincing that these people say, "They were SS men"? Or were they police or SD and Gestapo members? In part such errors arise obviously from the documents. But I cannot and do not wish to deny that according to a few documents terrible crimes have been established, and that they are numerous. Should not the Defense have an ample opportunity to comment on these documents and affidavits with as much preparation as for the evidence which the Prosecution presented in November, December and

January ? Should it not be given a few months' time ? Does the High Tribunal believe that the ancient legal principle "Audiatur et altera pars" has really been observed for this new evidence ? I do not fail to realize that my demand would mean a prolongation of the trial for months-- insofar as the case against the organizations is concerned. But if for these reasons the judgment cannot be delayed that long, then it must be passed now; but since the new evidence of the Prosecution cannot be taken into consideration, it can consist only in rejecting the applications of the Prosecuti . For I am of the opinion that the result of the Prosecution's evidence insofar as it may be considered, in view of what has just been said, forces the Defense to the conclusion that crimes in considerable extent were committed by members of the SS, but not that the whole SS organization is criminal.

Is it not striking -- and I should like to settle one point of the indictment immediately in this discussion of procedural and evidential questions -- that there are only two judgments, concerning the inhumane fighting methods of the SS, for example by shooting prisoners, against SS General Kurt Meyer (Normandy/front) and SS General Sepp Dietrich, and 73 officers and men of his army. That, Gentlemen of the Tribunal, is the result of the most energetic efforts, on the part of all the Allies for more than a year, which are understandable in the interests of the contentions of the Prosecution. Must one not conclude therefrom that in spite of this long period of time the Allied Prosecution was not able to establish more crimes through judgment ? The death sentence against Meyer, with which I am acquainted, was commuted. The trial of Sepp Dietrich and his men, the transcript of which I was not able to obtain, ended with 43 death sentences, but it is striking that the highest leaders did not receive this punishment. This must bring us to the conclusion that there were no such criminal orders from them, and consequently no criminal system, and the Defense brings forward some noteworthy objections against the methods of investigation and evidence.

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I should ask you to note the following, High Tribunal; These happenings occurred in the last half year during the most violent part of the war, and concerned only very few members of the Waffen-SS.

At the same time please remember the extensive counter evidence given by witnesses and affidavits, which the defense procured also for this particular point of the indictment (The training for and the carrying out of fair warfare, and excesses committed by the enemy, which were only meant to prove that from such occasional excesses in battle, one can not conclude a criminal system).

In this connection allow me to develop another principle governing the evidence which to my mind must be the basis of the estimating of the evidence in these proceedings: Where any doubts may arise, whether the individual charges are proven by the evidence, the weakness of which I have just made apparent, particularly where doubts arise, whether proved individual crimes may be said to be typical and that, therefore, the entire organization, that is, all its members can be considered criminal; where, therefore, one counter proof, or circumstantial evidence, is given against ten or one-hundred proofs of circumstantial evidence of the Prosecution -- in that case I believe that the Tribunal can not draw any conclusions which are sufficient for a condemnation in the sense of the indictment.

This is a fair logical conclusion arising from the nature of these proceedings. From the tremendous evidence at its disposal, the Prosecution has chosen and charged some incriminating facts, and then made the assertion that these were typical cases, that it had been everywhere like that, that these actions were typical for the SS, etc. As already stated, it is the sole responsibility of the defense to furnish exonerating evidence. And this is where the difficulties for the defense of the organizations, particularly of the SS, begin. The organizations have been dissolved, they exist no longer. When we established the evidence most of the members of the organizations, and all their leaders were in custody and many of them still are.

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The occupational authorities have secured the entire written evidence, all personal acts, correspondence, decrees and orders. It is true that we have been able to speak to most of the prisoners, but after so many years, and particularly, in detailed questions, the information was bound to be incomplete, and was given only in April, May, due to the slow progress of the trial. We could not always reach the competent persons. In connection with the question of the legal hearing, I would ask you to consider that we have no evidence at all from SS men from Austria and the Soviet-Russian zone of Germany. Out of reasons of security we could not be granted to conduct a research in the Allied document centers in which the confiscated documents are classified according to the subject they pertain to, and thus we were not able to obtain a reliable view based upon documents. We could not counter this deficiency by an approximate indication of the documents based upon certain assumptions, because a specified indication was demanded. I have made this experience in two important cases for which I can offer immediate proof. As things stand the counter proof is considered successful if the Prosecution succeeds in establishing but a shadow of a proof for their assertions.

Before I began with my considerations upon the Charter, and the law of procedure, I endeavored to refute the charge of the Prosecution that the members of the SS were incriminated by the happenings of the 30th of June, 1934. Not even the few directly concerned members of the Leibstandarte could have felt that they were committing a crime in killing men who were presumably guilty of high treason. In this sense it was, in the minds of the Germans, and the mass of SS men, which had been fooled in such a masterly manner, a further and final confirmation of the legality of his intentions when Hitler after the elections in the Summer of 1934 (nobody knew then that they had been falsified)declared that the struggle for power had now come to an end (SS Document 106). And it really seemed to be so. Even the issuing of the Nurnberg Law, which came as a surprise to the SS, as well as to most Germans, seemed to be merely a confirmation of the Party program, branded above as

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absurd but not as criminal in the sense of the Charter, particularly a confirmation of the policy which Frick had declared publicly already in the year of 1934, and which particularly denied the idea of compulsory transfer of population (SS Document 93).

It is significant that apart from the concentration camp system until 1938 -that is, 3 to 4 years- the Prosecution can not raise any concrete charges against the General SS. The underhand anti-Semitic measures taken by the Party itself, or by other organizations, found no echo in the General SS. Only in November 1938 did anti-Semitism receive new official criminal impulse.

The Prosecution charges the SS with having taken part in the planning and execution of the measures against the Jews in the Reich on the 9 and 10 November 1938. Thise charge is based upon documents US 24o, 3o51 PS, and 374-PS, which, however, if they are brought into connection with the evidence of the witnesses, prove the contrary. Many Germans who were indignant witnesses of those happenings know that other Party organizations -partly in civilian clothes- took part in these excesses. That is why I am concerned with establishing historical truth: On the evening of the 9 November 1938, Goebbels made a speech in the Ceremonial Hall of the old Nurnberg Townhall, occasioned by the murder of the German Legation secretary von Rath. It was an aggressive speech against the Jews, which lead to anti-Jewish demonstrations and excesses throughout the entire Reich on this night, apparently not only spontaneously but through preparatory measures of the Reich propaganda minister, as became known in the course of the trial. According to SS affidavit No.5, Schallermeier together with the testimony of von Eberstein neither Hitler nor Himmler heard Goebbels' speech. Hitler retired early to his apartments, Himmler was with him. Considering the evidence it does not seem impossible to me that Himmler at least was surprised by this action. The testimony of Eberstein and Schallermeier, SS affidavit No.5, put beyond doubt that Heydrich was informed of the action already taken place in Munich only towards 23.15 hours by the office of the State

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Police in Munich, that Himmler could be informed only shortly before the beginning the swearing-in ceremony at midnight, and that Himmler could come, and indeed came, to some decision only after this ceremony towards one o'clock.

What was the situation at this time. After the ceremony in Munich, and other places where the swearing in of the SS men had taken place, the SS marched off, and had - as every year- the general order to return directly to their homes in view of the special solemnity of the preceding ceremony. In the meantime the action against the Jews had been afoot for several hours. We know from document US 332, the report of the Party judge Buch, that this action was started by oral instructions of the Reich propaganda chief which were passed on immediately, that is, sometime before the first telegram of the Secret State Police, by a large part of the Party members present to the agencies of their Gaus by telephone.

The Party leaders present understood Goebbels' instructions to mean that the Party should not appear as the instigator of these demonstrations, but in reality should organize and carry them out. It is without doubt that from purely time reasons the SS until then could not have taken part in these horrible happenings. In the meantime Himmler had arrived towards one o'clock AM at the Hotel Vier-Jahreszeiten in Munich. According to the aforementioned affidavit of Schallermeier, the truth of which is established by other evidence, such as affidavit von Bassowitz-Behr No.9, and testimony of witness von Eberstein, Himmler gave two orders. The first was transmitted at 1.20 hours by Heydrich to all Gestapo agencies. This order was issued after the disaster had already occurred. For reasons of security it demanded the immediate taking up of contact with political agencies concerning the carrying out of the demonstrations, ordered unconditional protection for German property and life, and furthermore, made provisions for the taking into custody of Jews. The contents of this order, and the agencies to which it was given, clearly established that these were merely police measures.

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In no case are the SS or anizations which I am defending, incriminated in connection with these police instructions, since Heydrich who held no office, either in the general SS or the Verfuegungstruppe, could not give them any order (witness Norbert Pohl), Himmler's second order was given orally to the leaders of the chief sections of the general SS who were assembled at the Hotel Vier-Jahreszeiten. It contained definite instructions to the agencies of the general SS to help if necessary the Stapo with the safeguarding of Jewish property against all manner of plundering. He was obviously taking into consideration the opinion that this was an unworthy and despicable action which the SS should on principle keep away from upon the definite instructions of Hitler. The task of the general SS was only to alleviate the consequences of this action if this should become necessary. This order was immediately telegraphed by the Oberabschnittsfuehrers of Munich to their local agencies.

This is established without doubt in SS affidavit No.5,Schallermeier. The contents of the notes, which according to Schallermeier's affidavit, Himmler made of this occurrence gains incredibility if it is considered from this aspect. In no event can the assertion of the Prosecution that Himmler and Heydrich had deliberately assigned the SS for the action of the 9th and 10th November 1938 be considered proven. The contrary would seem more likely to me.

In this connection let us consider the actual participation of the SS in the Reich. The witness for Eberstein has described the occurences in the Munich district. Throughout the whole Reich, the SS was never ordered to participate in the excesses, nor did units of the general SS participate out of their own initiative. Their non-participation has been proved by numerous affidavits for all parts of the Reich, for instance, von Roedern, Kaufmann, Lott, Enzner, Eschholdt, Fischer and Kampp-Franz (No.7,8,104, 6, 105, 10, 70). According to the affidavit of Kampp-Franz, approximately two-hundred affidavits have been submitted in proof of the non-participation in the whole Reich territory in Camp 73.

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According to these affidavits the units of the general SS and most members of the SS in barracks had come to be sworn in in Munich as everywhere in Germany. They all agree to say that after the ceremony the members of the SS returned to their homes, without knowing anything about this action. Also, according to the affidavit, Kaupp-Franz, participation was strictly forbidden as far as this action became known during the swearing in. Most of the SS members only heard of this action on the morning of the 10th of November 1938, on their way to work or through an alarm given. Those units of the General SS, who had been alarmed upon the order of Himmler to the Oberabschnittsfuehrer, were assigned in several places in the course of the 10th of November to safeguard synagogues, for instance, Offenburg in Baden, (SS Affidavit 104 Lott) , see also 4407 affidavits summarized and collected affidavit number 119 - 122.

These affidavits prove that the General SS in many cases impeached further excesses and that within the SS, this condemnable action was disapproved of right from the beginning. Document US 332, a report upon the juridical party proceedings, in which five to six SS men are named, does not contradict this. For in such excesses committed by the masses throughout the whole Reich, the participation of individuals against express supreme orders cannot be avoided entirely. But that cannot be considered as symptomatic for the criminal nature of the SS without further proofs. That during these arrests, which were purely a task for the Police and were carried out by the Gestapo , some officials should have had worne black uniforms does not make this action an SS action. Gestapo officials too wore the black uniform. This would be a typical erroneous generalization which can be traced back to the fascination of the black uniform and of the SS sign, and whose falsifying influence upon truth and recollection must not be underestimated for the entire proceedings against the SS.

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In its optic and accoustic impertinent aggressiveness this sign was not only dangerous in the past through its publicity value, because in the German it awoke romantic historical feelings by the doubling of a Germanic rune, but even today after the destruction of all the myths surrounding it, it has the peculiar power of preventing any clear conception as to its nature. This word " SS " is so easily pronounced, without being accompanied by any clear conception as to its real meaning.

There exists the danger that a historical myth may be born which like any other such myth - based upon the ignorance of the facts, or, even worse, upon a semi-knowledge of these facts. We, who combat the Hitler myth wherever we can,-- we have done so in the evidence before the Tribunal -- do not wish that a myth should be formed around a group of people under the slogan " SS ", around the guilty and innocent alike. We do not want to help to create so-called " martyrs" in the interests of a neofascist propaganda.

That is why we must ask a definite question and give the answer: " What is the complete meaning of "SS?"

The decisive error of the indictment is that all, or at least all essential spheres of activity of Himmler's, are considered as activities of the SS. Without heed to the origin or tasks of the many agencies and units under Himmler's command, without heed whether there ever existed any organized bonds, the indictment assembles the general SS, Waffen SS, the SD, the Police, the Kl-System, the affairs of the Reichs Commissar for the consolidation of German Nationalism, the activity of the Chief of the Prisorners of War system and others, in one great imaginary unit, the SS. The indictment must proceed from such a unity in order to create a basis for the evidence that within the frame of an alleged conspiracy, all sectors of the public life in the State, in the Party, and in the Wehrmacht, were permeated with this SS, which had its tentacles over Germany and Europe.

H2721-0045

That Himmler's activity was identical with the activity of the SS is only true for the period until 1933 or 1934. Only until then did an organized unity SS exist and the prosecution has taken over this idea of the unity of everything which is called SS from this time, thus falsely interpreting the true development of the system. That was the SS as a part of the SA and therefore a section of the NSDAP.

The seizure of power opened an era in which a great part of all supreme and superior state positions were filled with Party leaders. From this time on, Himmler goes his own way at the side of the SS. First -- in comparison to other high Party members --- extremely cautiously, and then evermore dominantly.

It was mainly Heydrich who directed Himmler's inquest for State affairs, to the field of policy power. Himmler, like many of the SA leaders, had become Police President in Munich in 1933. Soon he was made Chief of the Political Police in Bavaria, and then in the other counties of Germany, with the exception of Prussia. Here, Goering was still Chief of the Gestapo. But soon Himmler became his Deputy and Heydrich the leader of the Secret State Police Office in Berlin. Himmler's ambition for the widening of his power in the State, which the SS could not offer him, now became ever more obvious. His goal was the Ministry of the Interior. Already in 1936 he gathered the entire police power of the Reich, which until then had been the affair of each County, in his hands, in his capacity as Chief of the German Police. Thus he had become the highest superior not only of the Secret State Police and of the Criminal Police, which one jointly names the Security Police, but also of the entire ordinary Police in Germany. Only now did he hold a position of power which was of the greatest importance, and it was given to him by Hitler and not by his SS, and not through the SS or for the SS. I ask the Tribunal to consider that these Police Officers have existed independently besides the SS, before Himmler became their Chief.

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In 1939, he was made Reich Commissar for the consolidation of German Nationalism, and was thus assigned a new task, the transfer back of populations, ect.

In 1943, he eventually was nominated Reich Minister of the Interior.

Through his personal allegiance to Hitler and through his acceptance of every, but every, new task, he gained the personal confidence of Hitler and thus extended his personal position of power within the Reich. It was peculiar to this Reich that Hitler should have united an almost inestimable number of offices and tasks in one single person who had his confidence. As an example, I point out Goering's person. In the measure that Goering continued to lose Hitler's confidence, Himmler's power rose meteorically. But this position of power he had gained owing to his personality and without his SS, and quite independently from the fact that he was their Reichsfuehrer. The witnesses, Grauert, Reinecke and Pohl, have amply testified to this effect.

The SS, formerly so closely connected with Himmler, had indeed, in the course of time, taken an individual and quite independent development, owing to the great number of the entirely different sections which began to take shape. Unfortunately the briefness of the available time does not permit me to describe here this development in detail, although it is of the greatest importance to the entire defense. But I have added the necessary explanations, always in regard to the furnished proofs, as annex to my plea, and I would ask the Tribunal to take note of these arguments in the verdict.

To prove the unity they have asserted, the prosecution says that the General SS was the basis upon which all the other organizations had been established. The fact alone that almost a million men have at one time been in the Waffen SS whereas the General SS had only counted 250,000 members, refutes this statement. In the aforementioned annex, I have shown how the individual organizations have been built up, added to and developed, according to their own rules.

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The general SS is not the source of life for the other organizations, but an ancient vestige which at first succeeded to keep alive, but which during the war was already disappearing, because it had to disappear for lack of any special task.(Witnesses Oberstein, Hinderfeld, Juettner, Pohl).

But the indictment did not mention the most important aspect. To my mind, this is an aspect which is particularly suited to bring life into the obscurity of the imaginary unity of the SS; where lay the executive power in the state. For an alleged conspiracy, only such an instrument may have been suitable, which controlled some means of the State authority, which had executive power in the State. Neither the general SS nor the Waffen SS were such organizations. At no time of their existence, did a leader or a simple member of the General SS, have more extensive rights in the legal public and especially police field, than any other German citizen. He could and did never carry out arrests or house searchings without incurring punishment.(Witnesses Reinecke, Oberstein).

The fact that revolutionary excesses were committed, immediately after the seizure of power, changes nothing. They were at once successfully combated as testified by the witness Grauert. No member of the Waffen SS had ever had more extensive rights than any member of the Wehrmacht.(Witness Hauser). Indeed the executive power in the State was alone in the hands of the police, the state police, the criminal police, combined as security police, and the ordinary police. A policy of power in the sense of an alleged conspiracy could logically have reposed only upon them.

The testimony of the witness Grothmann, who belonged to the closest circle around Himmler, is particularly revealing for the question which activities of the SS are to be considered connected with the executive power. This testimony is nothing special as far as the information is concerned that Himmler was informed of the affairs of the Waffen SS by an Adjutant of the Waffen SS, and of Police Adjutant, while the General Secretariat had to inform him of the affairs of the General SS.

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In this case as well the sharp separation existing between the various departments becomes very clear . The essential point here is that all matters concerning the concentration camp system and the totally different sphere of the SD were not dealt with and reported on by the SS Adjutant but rather by Himmler's own Police Adjutants. In this way the testimony given by the Witness Reinecke, is again being reaffirmed, who testified as to the judical basis for the separation into five independent spheres of influence under Himmler in the sense of the indictment, into General SS, Waffen SS, SD, Concentration Camp system, and Police.

Executive power is indeed the key for an understanding of the charges raised under the indictment and for a just evaluation of this case. In the beginning of its development, Himmler was on the side of his SS and had risen to the top. After the police power of the entire Reich had been transferred to him alone, the only thing he concerned himself with was this one sphere, the sphere of executive power. He played a leading role in the rapid development of Germany into a police state. Very soon he let every last vestige of regard for any and every legal consideration go by the boards. On top of that he continued to follow the path he had chosen for his organization, General SS and Waffen SS, and withdrew behind a heavy curtain of secrecy, hiding himself and the excesses of his police activity from these organizations as well as from the entire nation. It is quite impossible to understand all of this if one does not make sure of and appreciate the fact that Himmler had a Jekyll and Hyde personality. On one hand he preached and fostered ethical values, such as decency, manliness and courtesy. Here he used the instrument of his organizations, the General SS and the Waffen SS. On the other hand he exploited his tremendous power by issuing the most uncompromising orders and measures of a police state nature. At this point I should but like to refer to concentration camps, mass executions without trial, and the Einsatzgruppen. Here and here alone he used the instrument of the executive power in the Reich. A deep abyss looms up between these two. It wasn't surprising, therefore, that

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in the few speeches he made during the war in which he showed his obsession with his state police troops of the future, that he met with opposition among the leaders and the troops of the Waffen SS; for these men were soldiers and were fighting the enemy. It is quite understandable that the Prosecution would consider one side of Himmler's nature to be but a whitewash for the other. But nothing could be more wrong than an assumption like that, and it is not coincidence either that the Defendant Seyss-Inquart, from his complete knowledge of developments, and the witnesses Hauser and Reinecke, who, because of their former high positions and their present knowledge have an overall picture of events, describe Himmler as a man who had [illegible] different faces. And when they say that, they are in good company; for in the strength of his many conferences with Himmler, Count Bernadotte says exactly the same thing in his book, " The Curtain Walls", which has been quoted frequently.

Himmler,therefore, is not the SS. The fact that he is referred to as the " Reichsfuehrer SS" in all laws and directives which gave him new missions to accomplish does not alter this situation in the least. As the witnesses Reinecke and Kubitz have stated quite correctly in this regard, his official position and title, to all practical purposes, had replaced his name in public life. Specialized departments, like the Police and the Reichskommissar for the Consolidation of German Nationalism (Volkstum) or the position of Commander-in-Chief of the Reserve Army, and the Chief of the Prisorners-of-War system, did not become concerns of the SS just because they were transferred to the person of the " ReichsfuehrerSS."

However, that is something asserted by the Prosecution, and in order to support their position, they state further that as soon as Himmler took over new offices he immediately started to infiltrate them with members of the SS.That is equally wrong. The witnesses Zunke and Rader have confirmed that some of the members of the Ordnungspolizei were taken over into the General SS and not vice versa. An infiltration of the police therefore never took place. As far as the Security Police

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is concerned we can see from Himmler's decree (document 1637-PS) that the officials and employees of the Security Police were taken over by the SD, and received Police ranks commensurate with their SS ranks and not vice versa. They never served in the general SS for even a day.

The testimony of the witness Zupke, who was interrogated before the Commission on the 20 May 1946, and the affidavit deposed by Bombard on 13 July 1946 (SS affidavit 82) prove that roughly twenty different categories of members of the Ordnungspolizei became formal members of the SS when on the strength of ministerial directives they were granted ranks on the SS commensurate with their Police rank. This so-called " Coordination of Rank" does not establish true membership, for the Policemen involved did not take the SS oath, did not pay dues, did not perform SS functions, did not serve in the SS had no privileges or advantages of any kind because of their rank, and did not even wear the SS uniform. Their Police sevice remained constant and unchanged.

Everywhere else in [illegible] life the same procedure was followed. It wasn't that the SS filled key and other essential positions but rather that the men holding such positions were taken over into the SS as honorary leaders by Himmler.

Citing emphatic examples, the affidavits deposed by Mr. Fuehrer SS No. 63 and by Mr. Wunder SS No. 42, describe the appointment of honorary leaders; the affidavits deposed by Flister SS No. 49 and Bothke SS No. 48 show that the Kreis- and Ortsbauernfuehrer were taken over as a group by the SS in that way and the affidavits of Behr SS No.98 and Reinhardt SS No. 97 describe the taking over of the leaders of the Reich Veterans Society.

Therefore, it was not true that the SS infiltrated into the State, on the contrary elements foreign to the SS were taken over by its organizations. The bulk of the membership remained what it was, a unit of farmers, mechanics, students, workers, and representatives of all the professions. The tasks of the general SS were not changed in any way because of it.

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After studying this matter, we can see how little basis in fact there is for the assertion made by some of the defense counsel on behalf of individual defendants and organizations to the effect that during the war, the SS, exercised all the power of Government in Germany. Many witnesses and affidavits prove that the activity of the general SS, which must be described as typical Club-life, began to decrease at the beginning of the war and disappeared altogether during the course of the war. The Waffen SS was fighting at the different fronts, receiving more and more draftees into its ranks. It was under the supreme command of the Wehrmacht. These two branches of the SS therefore could not rule Germany during the war. As I shall demonstrate later the WVHA, which concerned itself with concentration camps, belonged to the SS only nominally, and had no administrative authority over any other institutions in Germany.

A reign of terror may well have been exercised through arrests and the putting of individuals in concentration camps, but that was not a matter of any branch of the SS organization, but rather of the ministry of the Interior of the Police and the RSHA (Gestapo).

The setting up of higher SS and Police Leaders does not change my statements either, for the name is in fact misleading. They had no authority to command over the Police and the Waffen SS. Only in the most infrequent cases, such as in the person of the Reichsfuehrer in whom were combined the State and Police position, for instance, Police President, were they authorized to give orders to the Police, but only because of their State position not because of their position as SS Leaders. This may be seen even more plainly in the occupied Western territories, for there was no general SS there. The higher SS and Police Leaders there did not have any authority of command in the Waffen SS, so that the higher SS and Police Leaders exercised only the public Police functions. I am referring to the testimony given by the witness von Eberstein, to the affidavits Martin (SS- Affidavit No. 86), Hoffmann (SS-Affidavit No. 88) and Bombard (SS-Affidavit No. 87).

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Then we see the following: Himmler's power increased tremendously during the war, but the power of the SS was not increased. We received this power not because of his position as Reichsfuehrer SS

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and he could not exercise this power through the SS, but he received it solely through State organs, which meant the entire Police. Competing with Himmler's authority, were other power factors not of the State, but of the Party and exercised by the Party (Reichs, Gau, Kreis-leitung, etc.)

All branches of the SS were outside this struggle for power between Himmler and Bormann.

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From the propositions presented by me we can conclude the following;

1) We cannot consider the organizations comprising the SS to be a unified instrument of a conspiracy.

2) The Court can only examine the question of criminal character for each separate branch of the organization.

The accusations raised under the indictment increased in seriousness as we approached the time of the war and finally the collapse. I shall now have to concern myself with the accusations raised, although because of lack of time I shall have to limit myself to the most salient points.

A very serious and comprehensive pattern of accusations against the SS has been included in the term " Germanization".

Under " Germanization" we certainly cannot mean the resettling of entire sections of a population and transplanting them from their native soil to a new locality, for the same thing is taking place today on those regions between the Oder River and the Vistula River in Silesia and Czechoslovakia, areas which were formerly German but have now been given to Poland. In order to arrive at criminal circumstances several vital points have to be added; namely planning, methods of execution, and connection with a war of aggression.

The contradictory but yet determining points in Hitler's orders never appear more sharply and clearly than in that pattern which the indictment understands by the term " Germanization". One thing, however, is clearly evident; these orders, some of which were issued in the form of laws, were not addressed to the SS. The decree of the 7th of October, 1939, Document Number PS-686, which has been quoted frequently, is of basic importance here. But no jurist can understand this decree any differently but that it established a new public authority to be known as the Reichscommissar for the Consolidation of German Nationalism. Out of the many who competed for this position, Himmler succeeded in coming out ahead, for he was made Reichskommissar. In this decree, which was not issued by party authorities but which was signed by the Reich Cabinet, Himmler is also referred to by his other title of ReichsfuehrerSS.

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If he had been a General in the Wehrmacht, then perhaps he would have also been referred to as Lieutenant General; if he had been an official he probably would have also been referred to as Minister. From this, no instructions to the SS as an organization can be discerned.

This new office was paid for by the Reich. The men working there were officials who were taken from the various other offices and agencies, not only from the SS.

Of course, SS members participated but their number was not overweening and they were not in the most important positions. Please refer to SS Affidavits Number 113,110,111,43,73, and 75. The Reichscommissariat for the Consolidation of German Nationalism belonged to the sphere of Himmler's personal authority, but no executive official of the Commissariat had the power of command over SS offices or SS members except that they were subordinate to him as his officials.

Under the Reichscommissar for the Consolidation of German Nationalism there was the Volksdeutsche Mittelstelle with which the Prosecution has dealt repeatedly, it was the task of the VDM to repatriate Germans who, up until that time were not German citizens and to bring them back into Germany from the countries where they had been living. The VDM furnished the means (Mittel) for this task. That is the real significance of the title used in [illegible] to incorrect translations. " Means" (Mittel) signify money or objects which had a money worth. The Mittelstelle procured and cashed the necessary foreign exchange. The VDM was not concerned with the other tasks assigned to the Reichscommissar for the Consolidation of German Nationalism which are characterized in the decree mentioned as " Elimination of the harmful influence of alien minorities." These tasks were taken over as police tasks by Heydrich and by the police departments of the RSHA. They were handled in the same way as the deporting of Jews to the East; for example, into labor camps or to Theresienstadt. For these matters also Heydrich and the police departments of the RSHA were exclusively responsible.

These accusations are dealt with in detail by the statements given by witness Kubitz (?) before the Commission and the affidavits

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Croutz, Greifelt and Colling (SS Number 115, 72, 79, 80, 71, 112, 113, 114, 77, 73 and 76.)

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As it has been shown abundantly before this Tribunal only Goering with the Four-Year Plan had influence upon the exploitation of the productive resources, and not at all the Reichskommissionar for the consolidation of the German Nationalism for the SS. (Golling, I SS No. 73.) The voluntary resettlements of Germans from abroad carried through by the Volksdeutsche Mittelstelle, particularly from the Soviet Union on the basis of the treaty with the Soviet Union cannot be considered as deportations or evacuations in the sense of the indictment (Greifelt II SS- 76). The Prosecution concluded the participation of the SS in that activity from the fact that many men in SS uniform had a share in it. The evidence given by Kubitz demonstrated that these people were not SS-men and did not carry out SS tasks. In regard to the details I may be permitted to refer again to the Appendix which I submitted.

The evacuation of Poles from the former German Eastern Provinces had been almost concluded already before the creation of the Reichskommissar for the consolidation of German Nationalism (Creuz, SS 72, Golling SS 71). They had been previously carried out by the chief of the civil administration not by the SS.

In the government general there existed special legal conditions, so that the offices Stabshauptamt and Volksdeutsche Mittelstelle were not able to interfer nor can be held responsible for the conditions that existed there.

The evacuations in the West were performed by the chiefs of the civil administration as the ones exclusively competent for them (evidence Kubitz, affidavit Brueckner, SS 74, Edgar Hoffmann SS 75, Creutz II SS 80). The members of the former German minority in the former Polish provinces were given German citizenship not by the Reichskommissar for the consolidation of German Nationalism but by the Reich Ministry of the Interior and its subordinate offices already at a time when Himmler did not even hold that ministerial office. The procedure of the Volkslist which erroneously

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has been translated " Race Register" was carried through by the Reichs Ministry of the Interior. This shows that that list had nothing to do with the Reichskommissar fo the consolidation of German Nationalism nor the race ideology of the SS (Golling I SS 71).

The confiscation of the agricultural property by the Reichskommissar for the consolidation of German Nationalism was based on a decree by the Reich Government of October 8,1939, in accordance with the incorporated Eastern territories were declared Reich territory as well as on those decrees which in the framework of valid law had been pronounced properly and which not even were co-signed by the Reichskommissar for the consolidation of German Nationalism (SS document book, No. 13).

A thorough examination of that decree will show that the ordered confiscations actually had already been pronounced before the Reichskommissar for the consolidation of German Nationalism had taken office. They did nothing but collect and re-examine the confiscations which had already taken place (Creutz, SS 72, Golling SS 71.)

It would be entirely fallacious to speak of a confiscation through the Reichskommissar for the consolidation of German Nationalism or even the SS for the taking care of racial Germans or the rewarding of meritious Nazis, since the confiscations carried out by the Reichskommissar for the consolidation of German Nationalism were not suitable to furnish land for settlement or to drive away farmers from their estates (Golling SS 71, Greifelt I SS 73, 76, 78, Creutz SS 79).

For that reason the Reichskommissar refrained from any settlements coupled with a transfer of property. The only thing which happened was that the trustees already on the ownerless estates were replaced by trustees taken from the ranks of the resettled ones.

The opinion of the Prosecution which is in conflict with this description (1352-PS) is based on the unauthorized acts and proposals made by some subordinate official Wusche who did not even belong to the SS and whose errors --- as shown by the document itself and affidavit SS 11 --- were corrected [illegible] by the Reichskommissar.

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for the consolidation of German Nationalism is the case Fusche inasmuch as this man was relieved of his office because of his entirely erroneous conception (Golling 71). No uniform plane is apparent in the so- called Germanisation. The chiefs of the civil administration had their districts evacuated, and according to other motives and orders (Brueckner SS 2, Edgar Hoffmann SS 75) The agencies of the Reichskommissar for the Consolidation of German nationalism and the Chief Staff Office did not approve these evacutions. They could not, however, stop them, but hindered them as far as possible and practically stopped them altogether. (Testimony of Kubitz, affidavit Brueckner, Edgar Hofmann) Himmler, for instance, did not know anything about the plans of Buerckel or Hitler. The Polish population in Posen, West Prussia, was evacuated, in upper Silesia it was not evacuated. The transfer of the Germans living in the Baltic countries was decided within very few hours, but absolutely nothing was known as to the carrying out of their settlement (Kubitz). The Reichskommissar for the consolidation of German Nationalism transferred German Nationalism from Lublin to Posen, the Governor General anew settled Germans in Lublin.(2916-PS, 910 PS, Creutz SS 73.) Continuous transfers back of Germans from abroad brought hundreds of thousands into the Reich, despite the fact that for years more than half a million had been waiting in camps for some kind of settlement. (Kubitz).

The Polish property was confiscated by the four years' plan, the Haupttreuhandstelle East (Trustee Headquarters), and the Reich Ministry for Food. (RGBl, I, S. 353, 1270)

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From this scanty sketch of the reigning confusion one cannot speak of a well thought out plan for Germanisation on the part of the Reichskommissariat, or on the part of the SS.

Another point of the indictment :

Deportation In View of Slave Labor :

The deportation of civilians for slave labor, particularly into Germany, takes an important position in the indictment amongst the crimes committed in occupied territory against the civil population.

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Directed above all against the Defendant Sauckel. His defense counsel, Dr. Servatius, has dwelled on the taking of evidence and on the legal evaluation of the concept of slave labor. At this time we simply refer to that.

The Prosecution and to some extent, Dr.Servatius too, however, are of the opinion that the SS shared the guilt for those crimes. As far as the General SS and the Waffen SS are concerned, this point of view cannot be adopted.

As shown before the General SS practically had concluded its activity at the beginning of the war. There is not a single piece of evidence which would show that any unit of the General SS had anything to do with the deportation of civilians for labor service.

The same is true in regard to the Waffen SS which never had any influence on the labor program of Sauckel and which also was never employed for the execution of his measures. The recruiting of foreign laborers for their employment in the Reich was, as a matter of principle, a task of the administration. For the making available of manpower to Sauckel's organization, the Reichscommissars of the occupied areas were used and they used their executive staff, as for instance, the General Commissars, etc. They, in turn, as prescribed by the laws of the administration used as far as necessary the General and Security Police; the SS, particularly the Waffen SS was not available to the General Commissars, and had nothing to do at all with the labor program (SS Affidavit von Bonhard, No.108).

In special fields this system was not changed either. The Waffen SS and the General SS did not give any assistance for the transfer of arrestees to concentration camps and their employment for slave labor there. As well known the only authority in charge of referrals to concentration camps was the Gestapo. It was also in charge of the bringing in of new arrestees. This has been stated already by Mr. Farr of the British Prosecution (Page 1636 of the German text of Proceedings)

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This is shown also by individual pieces of evidence, e.g. Document L 61, which speaks of the putting of criminal and asocial Poles into concentration camps by the Chief of the Security Police and SD. It also proves that the exchange of Jewish against Polish workers in the Reich was based exclusively on an agreement between the office Sauckel and the Chief of the Security Police. Thus the SS, both Waffen and General SS, had nothing to do with it, as was wrongly assumed by the German proceedings, (page 105A). This is equally true for the transfer of other groups into the concentration camps and their employment in armament plants there. Without exception these referrals were handled by the Gestapo. This is true both for the referral of Frenchmen (Compare Servatius' plea, page 39) and that of Partisans (PS 744 USA Exhibit 445). Again these cases therefore are eliminated from the material charging the General or Waffen SS because the arrests and referrals to a concentration camp of those groups was performed not as a measure of securing manpower, but on the basis of State Police considerations. Himmler's order, PS 744, furthermore is based on a decree by the OKW (Keitel) ordering that those prisoners who were taken in the warfare against the Partisans were to be put into camps and to be referred to Sauckel through the labor offices. This was therefore, a group of persons which ought to have been referred to courts martial as snipers and whose later referral to a concentration camp constituted only an improvement. If the General SS and the Waffen SS had nothing to do with the referrals into concentration camps, it is impossible to charge them with the crime of dragging them to slave labor simply because the prisoners worked later in concentration camps. The following has to be said in this connection.

1) As I have explained, the concentration camps were not an institution of the General SS and Waffen SS. They were a state institution of the General SS and Waffen SS. They were a state institution of their own. (SS Affidavit No. 100, Flanslau).

2) The Chief of the WVHA, Pohl, was in charge only of the administration

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of the concentration camps. The products of the prisoners , just as those produced by the prisoners of the General Administration of Justice, were used by the Reich Finance Office which existed in each concentration camp. Just as any other fiscal office of the Reich, they were examined and controlled by the Rechnungshof des deutschen Reiches (Affidavit Frank No. 99).

3) In the main, the prisoners were made available to armament plants of a public or private nature, as well as the economic enterprises of Himmler. (SS Affidavit No. 9, Frank and 100, Flanslau). Their position was exactly the same as that of other armament plants which received Eastern or other foreign laborers through the Office Sauckel.

Nothing against the General SS or the Waffen SS can be concluded from the employment of those prisoners on the interest and for the benefit of the Reich. The evidence given by Luettner and the SS Affidavits 99 Frank and 100 Flanslau show that the products of their labor did not flow to the Waffen SS as the Prosecution has charged.

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In the battle in the East the activity of the Einsatzgruppen A,B,C and D of the Security Police and the SD appeared for the first time. They were formations of a special type of a Security Police character - that is, of the Executive of the Reich. I need not go into the other tasks of these units. Here it is a question only of that horrible activity to which the witness Ohlendorf testified; particularly, the part played by the Waffen -SS.

The testimony of Rede and Ohlendorf has proved that the Einsatzgruppen were tactically never under any command posts of the Waffen-SS. It is shown, rather, that these units were tactically subordinate to the Army groups of the Wehrmacht. There were never any army groups of the Waffen-SS.

Against the Waffen-SS there is the fact, it is true, that three or four Waffen-SS companies - a total of one battalion - had to be assigned to these units without the appropriate battalion staff. I said had to because the instructions from Himmler were direct (witnesses Juettner and Ruoff). Document L-130 proves that, for example, in Einsatzgruppe A 340 of 999 men were soldiers of the Waffen-SS. The total strength of SS men assigned to these units was 600 to 700 men.

The fact that men of the Waffen - SS were used for Security Police tasks seems to contradict the fact which has been proved by me, that the Security Police and the Waffen-SS were two completely different organizations. But that is not the case: The testimony of Juettner shows that the assignment of three or four companies was ordered by Himmler with the express provision that these men should serve as protection and guard units of mobile police details which were to follow the fighting troops. That police details were necessary in the occupied territory was clear.

That they needed military protection, if they followed the fighting troops immediately, was not surprising. It was never mentioned that the Einsatzgruppen were to carry out exterminations of human beings on a large scale

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and that men of the Waffen SS should be called upon to participate in these actions against their express orders to maintain and afford security. No suspicious doubts could arise in this connection, (Witness Juettner) nor did it become known at any later time in the leading agencies of the Waffen SS that these SS men had been wrongly used for such tasks. (Witness Ruoff, German Commission Records page 2413) The witness, Blume, of the organization section of the Waffen SS, had stated that these three or four companies- contrarily to all other units of the Waffen SS had never submitted any reports of the true state of affairs to the Fuehrung hauptamt. Practically they were not even part of the Waffen SS. This also explains that none of the leading or less important witnesses for the Waffen SS ever gained any knowledge of the activity of the Einsatz groups which had been held strictly secret, nor especially of the participation of any SS men.

The separation of not even one thousand men, which was so much talked about, has changed nothing in the nature and the task of the Waffen SS, an organization including millions of men.

When there was any talk of Einsatz Commandos the Prosecutors generally mentioned the so-called special Commandos of the East in the evidence. Since these were merely concerns of the security police in which members of the General SS or the Waffen SS were never used, I need not dwell on these matters.

Partisan Warfare:

Due to the statement of the witness, von dem Bach Zelewski, and a statement in the affidavit of the witness, Rode, which was submitted by the Prosecution, the idea of partisan warfare in

Russia had been quite erroneously connected with the idea of the systematic extermination of Jews. Both witnesses declared that upon looking back they had come to the conclusion that the partisan warfare in Russia was merely a pretext for the extermination of the civil population.

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In the meantime, this incredible assertion was rectified by the witness Rode in cross examination before the Commission. As Rode's testimony shows, his interrogator discussed the compilation of the affidavits referring to Partisan fights and, at the same time, to the aforementioned Einsatzgruppen and Einsatzkommando of the Security Police. Rode's statements referred only to the activity of the Einsatzgruppen, whose activity the interrogating officer often falsely brought into connection with partisan activities by calling the "partisan combat groups".

In reality, the partisan fight was an ever intensifying, small warfare, which was developed especially by the Soviets behind the front. It was intend to cause difficulties to the fighting troops by interfering with their reserve channels, and it also took direct action against units in the rear. This type of warfare was all the harsher, since the partisans knew that accor ding to international law they could be considered as free lancers, and accordingly, fought a bitter war.

Because of the comparative division of the Hinterland, behind the front, in the rear army area, and in the area of the civilian administration, the task of combating partisans became either the responsibility of the Wehrmacht, or became an activity of the police. The witness HAUSSER said on 6 August 1946, at the beginning of his interrogation:

"That was a military-police task". (Not military political task, as it was erroneously translated into English.) Therefore, those who possessed police powers in the occupied area, that is, the higher SS and police leader, and the chief of the anti-partisan unit, had to carry out their task in collaboration with these units. The fact that occasionally units of the Wehrmacht and only once, a unit of the Waffen SS, Cavalry-Brigade, were committed for that purpose, neither changed anything in the manner of the activity, nor can one conclude, therefrom, that there was any organizational connection between the Partisan combat and the Waffen SS in the rear police area. (Witnesses JUETTNER, RUOFF, GROTHMANN.)

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Alone from his statement that inferior troops had been chosen for Partisan warfare, one can see how the testimony of the witness von dem BACH-ZELEWSKI must be judged, a witness whose testimony contains several discrepancies (witnesses GROTHMANN, REINECKE, JUETTNER, OHLENDORF). Since, according to the testimony of the witness HAUSSER there were never any inferio units in the Waffen-SS, on the contrary, one can not establish a connection between the testimony of BACH with the Waffen-SS. According to the explanatio of the witness GROTHMANN, the units DIRLEWANGER was a probation troops of prisoners, such as are being used in all armies of the world. It is an essential fact, here, that it was never a unit of the Waffen-SS, or even as BACH states contrarily to the real facts, a unit of the general SS (witness GROTHMANN). Apart from anything else, it would never have been adequate for the war against the Partisans.

Thus the charge that the Partisan warfare was a pretext for the extermination of civil populations is disproven, and furthermore, any special participation of the Waffen-SS is also disproven.

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CONCENTRATION CAMPS

Concentration Camps existed from the very beginning of the Hitler regime on. Without them the Hitler State was inconceivable. Hundreds of thousands went through those camps, were degraded and mistreated there; more than a hundred thousand died or were killed there.

It cannot be denied that the name of the SS is connected with those murders and misdeeds. In the face of all the world this confession must be made in this trial. And just as every German must be ashamed that such horrible inhuman things occurred in his country, even more should every SS man search himself and examine to what extent he is politically or morally guilty for those happenings. He should be concerned, not only with the defense against the accusation of the Prosecution that every SS man have become a criminal through those crimes, but he should again reflect his whole life and study when, where and how he might have deviated from the road of true humanity, perhaps only in thoughts and memories. This he can do, he must do, - even if he denies his criminal guilt and when he says that he has stood for four years in the front lines engaged in toughest fights, believing in Germany and her just cause. And if he feels shame, genuine shame - and even if only a little of it - then his reflections, then this trial, were not in vain. Then that purifying feeling of guilt is present to which Pastor Niemoeller has referred, a man who has been misunderstood so profoundly.

But even if that SS man should remain in his inner obstinacy, even if all those SS men should remain unteachable - and from my visits to the camps I know that this is not the case - even then, we would have to continue to serve earthly justice, would have to examine whether due to the concentration camps and other atrocities, the SS is to be considered a criminal organization, whether all SS men became by those acts, criminals.

We therefore have to occupy ourselves with the details of those matters, even though millions of victims of the concentration camps complain, hundreds of thousands of the surviving

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inmates suffer from the aftermath, and even though the world accuses in one single outcry the SS.

When, in the beginning of March, I was charged with the defense of the SS, I found a considerable amount of material of the Prosecution, evidence taken in the main proceedings, and many documents which were assembled in the document book "Concentration Camps". The American motion picture on the concentration camps I had seen shortly after the occupation of Germany. All that was gruesome, horrible and surpassed all imagination.

But if reflecting upon those things calmly - and to do so remained necessary - it yet remained obvious that if things had been like that before the war and during the war in the concentration camps, that then it could not have been possible that hundreds and thousands were discharged, that work could not have been carried on during the war as it was, and that finally, those things could not have remained unknown to the masses of people and to the mass of the detained SS men whom I now interviewed.

There were contradictions which could not be solved: In the American report on the development of the Buchenwald Camp from 1937 to 1945, (Document EC 168), the basis of which I do not know, the following which is taken from a letter of the WVHA from December 28, 1942, attached as an appendix:

136.ooo people were brought to the camp within a half year. During the same time 7o.ooo died. Though it is obvious that not just half of those new inmates died, but that 7o.ooo of a total population of some hundred thousand inmates passed away, yet that mortalily rate is frighteningly high.

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Thus the Prosecution seemed to be right in affirming that the Detainees were systematically exterminated or at least killed through overwork.

But this was not in aacordance with the order issued in a circular of 28 December 1942 by the WVHA, according to which the doctors of the camps should take all measures to insure lower death rates and to maintain working capacity as high as possible, by the control of food and working conditions and by suggesting practical ameliorations which should not remain on paper. Neither was this in accordance with the fact testified by witnesses over again that foreign and German commissions inspecting the camps and even SS Fuehrers themselves gained a very good impression of the administration and the prisoners.

I have been and am still of the opinion that for me as lawyer and defense counsel the fact could not be sufficient that the tremendous number of victims was there and that the whole world said that they had been murdered and ill trated by the SS system. In this decisive question which is produced by the mass effect of a mutually conditioned formation of opinions, in other words, a typicial case of mass suggestion of public opinion, does not yield any facts which may be considered relevant by the Tribunal. For here we have to find clear facts without any prejudice. This is important for the following questions. Who were the authors of each of these crimes which became the enormous number of anonymous concentration camp atrocities? Did they do it on their personal initiative or on order? Do they belong to a typical criminal group, and if so, to which one, in order to discover a collective guilt? In which relation are they to the organization of the SS, that is, to the tens and hundreds of thousands of members, which had not been active in the concentration camps and affirmed to have ignored these crimes?

H2721 - 0072

I hoped that these questions had been answered by the Allied Courts which had been sitting in concentration camp trials since last year, because that might contribute to the quicker sentencing of all the criminals.

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Your Honors: That is the reason why I have made an application to place at my disposal the records of all these trials for consideration. From them I might have discovered many facts which have come to my and public opinion's knowledge, only during these last weeks.

This application having been rejected, I have never theless nothing left undone to discover the truth. My application aiming at placing at my disposal the concentration camps' administrative files of the WVHA, from which only incriminating extracts habe been dealt with by the Prosecution, met with considerable difficulties because it was made at a relatively late date, but I do not need it any more because I succeeded at last in the beginning of May to find a witness whose testimony is, I believe, decisive in many respects, for the discovery of truth, that is, for the historical and in this trial, relevant truth. This witness is Dr. Morgen.

We owe this witness the discovery of three primary facts. First, the last and profoundest reason for the killings in the concentration camps were the outlawry of the detainees, the omnipotence of the police (Gestapo) and the weakness of justice.

Secondly, command and execution of mass extermination of Jews in special so-called extermination camps was ordered by Hitler directly. Knowledge and execution of these orders was confined to very few.

Thirdly, an absolute sphere of secrecy together with a diabolic means off deception was destined to keep knowledge of the happenings in the concentration and extermination camps from the public and the Prosecuting authorities.

I shall never forget my first meeting with this witness, Dr. Morgen. Everything in this gigantic hunched looking man seemed to strive for expressing what he knew for about two years, what he had viewed and experienced for months while dealing with detainees and personnel in these places of horror.

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He had twice reported in detail, once to the highest competend German authorities, so that they might improve conditions, a second time in 1945 to the American investigating authorities for concentration camp atrocities. But both times his revelations were unanswered. With flagging hope Dr. Morgen made his report for the third time, with which, as before, he wanted to help to find the guilty, protect the innocent,and to show the German people and the world the final guilt of the criminal leadership for the most horrible murder in world history.

In this he succeeded.

The beginnings of the concentrations camps are characterized by absolute illegality.It begins with arrest without legal grounds. There are purely considerations of political expediency. But these have always characterized this means of power, which has been employed from the beginning of this century up to the present by many civilized states, particularly in times of great political tension, under various names.If therefore,according to International practice, there is nothing illegal in the establishment of such camps, and the confinement of prisoners, it must be admitted that immediately after the seizure of power, and in the years 1933 and 1934, the execution of this arrest was accompanied by numerous atrocities and murders. Documents 1216 PS and D-926 speak a terrible language. There is also sufficient proof that members of the SS were also responsible for this.

But soon the establishment and guarding of concentration camps was legalized. From 1933, 1934, on, they were financed from the budget of the individual German Laender, and administered by the political police. As head of the political police of all Laender, except Prussia, Himmler, in 1934, regulated the guard and administrative conditions uniformly . By taking over a part of the previous guard personnel, SA and SS men, he created the Death Head formations and supplemented them with volunteers from

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all sections of the population without consideration of membership in the Party and the SS. They are now intended exclusively for guarding concentration camps

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comprised, in the year 1936, 4oo men from the Kommandantur and 3.6oo men for guard duties. They guard about 1o.ooo - 12.ooo prisoners in five concentration camps all over Germany. I ask you to compare the then unusually large membership of the General SS with these figures.

In 1936 as well, the concentration camps and their guard personnel were taken over into the Reich budget; that is, separated according to Kommandantur and Guard personnel.

At the beginning of the war the Kommandantur personnel consisted of 6oo men; the guard personnel amounted to about 7.4oo men. There were only six concentration camps in all of Germany, and as yet no work or subsidiary camps, with a total number of 21.3oo prisoners existed.

At that time there were about 24o.ooo members of the General SS. The Waffen SS did not yet exist.

In my explanation of the question of the Organizations, I have proven that the "Totenkopf Units" (Death's Head Units) created in 1934 special troops of the State, were not paid by the party but by the Reich and that they had in common with the General SS only a part of their name, "SS", and the chief, Himmler. I am submitting this explanation as an appendix.

(This follows in particular from Hitler's Secret Edict of the 17th of August 1938 and from Document SS 94 (Passive Legalization))

May it please the Tribunal, of importance seems to me the following change after the beginning of the war, when the wave of destruction begins to mount slowly in the concentration camps.

6.5oo men guard personnel were sent to the front with a newly activated division. Thus they were eliminated entirely from the concentration camp system. During the course of the

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entire war there were employed about 30.000 men in the concentration camp system, as can be seen from the testimony of Brill and from Affidavit No. 68 (Kaindl). These included new arrivals and men departing. They comprised about 1.500 men of the orginal cadre of the Totenkopf Units (Death's Head Units) and 4.500 men originally from the General SS.

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These 4.5oo men were a part of 36.ooo members of the general SS who had been called up until 194o upon the emergency service decree, and who had become members of the Waffen-SS. The remaining 24.5oo men of the concentration camp personnel - that is, eighty percent - originally had no nominal connection with the SS. These were 7.ooo persons of German descent who had been called up, lo.ooo German Nationals who had volunteered to go to the Front in the Waffen-SS, and 7.ooo soldiers subordinate either to the Army or the Airforce. Many of the volunteers came from the SA, the Reichskriegerbund, the Party and other organizations, all with the exception of the original personnel of 1.5oo men had been assigned the task of guarding the concentration camps against their will upon the order of Himmler, and without their having any connection with the Commando Amt of the Waffen-SS. Only in the course of the war were these guarding and administrative units of Himmler's nominally taken over into the Waffen-SS, thus exceeding his powers. This was done in order to prevent the personnel of the concentration camp continually having to be freed from military service, that is to say, for reasons

which were practically to put the regulations of military supervision out of force. After the unmistakable evidence given by the witnesses, Reinecke, Juettner, Ruoff, Brill and many others there can be no more doubt that the police task of the concentration camp system did not change for all that, and that in particular the concentration camp system did not become a concern of the Waffen-SS. And, indeed, the entire concentration camp system even after the formal transfer of the military staff into the Waffen-SS was not directed and administrated by the needed agencies of these organizations, but by a special office, the well known

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Amtsgruppe D in the chief office of the Economic Administration WVHA (witness Stein, Affidavits Fanslau SS 41, 100, Frank No. 99). This Amtsgruppe D, which was entirely separated not only from the other SS agencies, but also from the remaining departments of the WVHA, for organization, personnel and also location, as show in Affidavits 66 Kaindl and 99 Frank, surveyed and gave orders to the military personnel and commandantur personnel. All income from concentration camps, especially from work done by the prisoners, was booked with WVHA Amtsgruppe D.

H2721-0080

and that only as temporary entries for the Reich, which therefore did not benefit the Waffen-SS. The budget of the Waffen-SS was treated in exactly the same way as that of the Army. It was not connected with that of the Army, but it was established in the same way, adopted to that of the Army and brought into correlation by the same officials of the Ministry of the Interior.

Never - I should like to emphasize - was a complete unit of the Waffen-SS assigned to guard concentration camps.

Thus, your Honors, I have explained to you the jurisdiction of Kommandantur of guard personnel and the administration of the camps, and have limited it as regard the General SS and the Waffen-SS.

Still sharper is the limitation of jurisdiction in the question of who had to decide on the admission and release or on the killing of prisoners. That was exclusively the Secret State Police.

In this state of affairs there is no doubt that those responsible directly or indirectly, for all atrocities and murders which occurred in the concentration camps are to be found at the head and in these two offices and among the concentration camp personnel.

The witness, Dr. Morgen, and many affidavits on concentration camps, emphasized however - I must point this out now for the purpose of further limitation - that the guards on principal had nothing to do with the internal administration of the camps, that it was forbidden and impossible for them to enter the camps proper. Executions and shootings by order of the RSHA and certainly those on the basis of the assumed right of the Commandant were carried out by a detail of the Kommandantur staff, not by the guards.

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To be distinguished from the concentration camps are the extermination camps. They were established after the year 1942, after Hitler had declared war on the United States and now wanted to take the most bloody revenge for this development of the war, for which he held the Jews throughout the world responsible. From the terrible descriptions of the witnesses Hoess and Morgen

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we still recall the technique of these mass killings.

From the testimony and affidavits of Hoess and Morgen and the examination of Wisliceny before the Tribunal and the Commission, we have now obtained a comprehensive picture of this whole murder system. Hitler and certain offices of the Chancellory of the Fuehrer - with practice in murder from the extermination of the insane - employed the services of two experts, Reichsarzt (Reich Doctor) Dr. Gravitz and Kriminalkommissar Wirth. The one developed medically the best methods for killing, the other, the best technique of execution in deceiving the victims and the surrounding world.

Aside from Wirth, the head of the extermination camp near Lublin, there was Hoess, the head of the extermination camp in Auschwitz, or rather Monowitz, who was at the same time head of the concentration camp at Auschwitz.

One of the persons who brought in these victims was Eichmann, who was incorporated in the Gestapo, and up to Hitler's order for final solution, that is, killing, deported the Jews to camps in the East.

The transports - as Wisliceny testified before the Commission on 5., 6 , and 7 June - was accompanied only by Police, including Slovakian and Hungarian Police, and only a single time by SS men, who had been drafted in Hungary as racial Germans.

All these extermination installations and details can be traced back to special orders of Hitler, of the Chancellory of the Fuehrer, and were outside the framework of the normal concentration camp system. For that reason, they did not have the normal chain of command and form of organization. Wirth was Criminal Commisar without being an SS Member. Hoess received extermination orders, aside from Himmler, only from Eichmann

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personally, without being allowed to inform his immediate superior, Gluecks, the Inspector of concentration camps, of them. So Hoess testified on 15 April.

Now what follows from all these terrible events - from concentration camp atrocities through the Einsatzgruppen to mass gassings - for the charge against the SS?

H2721 - 0084

The prosecution says that all the crimes charged have been committed to such a great extent and in such vast proportions, that they and the criminal aims and methods must have been known to every member.

The prosecution thus says that ignorance of the criminal nature of these tasks is a condition for the judgment, the decision of the court of 13.3.46 is in agreeance.

The assertion of the prosecution is based upon the following arguments:

Before, and particularly during, the war the press and the wireless, statements of official personalities and all manner of publications in the allied countries informed the public of these States widely about the atrocities committed in the concentration camps, and other crimes. Under these circumstances it would seem obvious to conclude that, if in these countries such crimes were almost universally known of, it must have been even more so the case in Germany and particularly in the SS. The collective affidavits which have been submitted and are partly extensively proven show that the majority of SS members deny any such knowledge. But the defense has countered the charge with a comprehensive statement: The crimes committed within the limits of the German power sphere were carried out under a minutely planned system of secrecy so that the mass of SS members not only did not know anything about them but, indeed, could not possibly have known. The charge of the prosecution can only be made credible by the legally very doubtful use of deductions; whereas the argument of the defense is proven by the facts. And this proof has been furnished by the defense.

Let us start with the concentration camps. On looking back we can easily detect the thick veil of secrecy and

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deliberate deceit. In all this time only five or six camps were existant in Germany with 12.000 prisoners in 1936 and 21.000 in 1939. It is obvious that for this period the charge of the prosecution is not valid, which maintains that on everyone of his journeys every German passed many concentration camps on his way.

H2721-0086

But the relatively small number of concentration camp personnel, a few thousand, also makes a spread of information about circumstances in the concentration camps seem unlikely. The majority of this personnel - the guards - were not allowed to enter the camp proper.

Characteristic of the deception of the public, are the statements of Himmler made at an inspection of a concentration camp by Wehrmacht officers, which are contained in the collection "National Political Course of Instruction", (Nationalpolitischer Lehrgang) (Document PS-1992A).

The prisoners consisted of Communists and criminals, who were in part assigned to the camp only for a few months, in part for a longer time. He mentions the cleanliness in the camp, the frequent washings and change of linen, and the use of toothbrushes. Thus the impression had to be given to the visitors that the criminals were really an anti-social element of the lowest grade, who had a bearable life in the camp. Numerous affidavits declare that visitors, precisely from SS circles, for example in visits of Junker schools, found orderly conditions, prisoners in a satisfactory state of nutrition.

Everything in the camp is secret. Not only the official execution of death sentences of courts, but also the execution instructions of the RSHA, which began only at the beginning of the war and certainly the murders arising from the assumption of power of the Kommandants, were not undertaken publicly. Dr. Morgen describes this in detail in his affidavit number SS-66. In his examination he described all the clever methods to disguise murders as natural deaths and thus to deceive the civil courts and from 1940 on the SS courts.

H2721-0087

I ask the Tribunal to consider in these questions for once, that the deaths and mistreatments began on a larger scale only with the beginning of the war.

The obligation to absolute secrecy was encumbant not only upon the personnel but also upon the released prisoners. The affidavits of prisoners which the prosecution has submitted frequently emphasize this order for secrecy, but it is striking that they themselves do not claim to have violated this order (e.g. Document 2334 PS). According to our professional experience these orders of secrecy had a very strong effect even where a condition of great confidence existed. The fear to return to the camp for any indiscretion was too great.

Since the activation in 1934 of the Death's Head Unit as camp personnel, the General SS no longer had anything to do with the concentration camp affairs and certainly not with the Kommandantur personnel in personnel or legal questions. The Amts Group D, of the WVHA with their small group of thirty thousand men of the above mentioned nominal Waffen-SS had become an independant and separate system with their own telephone and teletype net and their own couriers to the concentration camp. Only the Gestapo had a channel into the concentration camp consisting of the so-called political department, which was subordinate to it and led by a criminal secretary. Here also there was no connection with the rest of the SS.

It is important for the question of secrecy that, as Kaindl explains in affidavit SS 68, the staffs of the Kommandanture were made up of the same personnel until the middle of 1942 which they had at the beginning of the war. Thus the knowledge of the events could not be spread before 1942. From a psychological standpoint one must consider

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that these persons, responsible because they issued orders or received them had not the slightest reason to discuss their sinister acts.

In my opinion the witness Dr. Morgen has described authentically in vivid examples how difficult it was to look behind the scenes.

H2721 - 0089

He has explained in detail how, through the cooperation of Kommandant Doctor and Prison Director, often, together with devoted Kapos, any crime could be concealed in such a way that neither the judicial authorities up to 1939, or later the SS courts or the other prisoners, noticed anything.

These conditions lead to terrible murders and mistreatments. But in the interest of objective determination of the truth, and to evaluate these events in the light of the collective guilt question, I must emphasize Dr. Morgen's statement that we met Camp Kommandants and Doctors who did everything humanely possible for the prisoners.

And I may recall the answer of the President to Mr. Dubost in the session of 18 (?) January (?) 1946, that prisoners of all camps would have to be examined if he wanted to prove that it had been so murderous and inhuman everywhere.

I do not intend to defend the SS courts here. Their fate ist not an issue at the moment. But does it not give cause to think if even they recognized only in 1943 --and that by accident--- that the so carefully camouflaged deaths were in reality murder? Does it not give cause to think of one sees the resistance of influential people --Pohl, Kaltenbrunner, Mueller-- which went so far that Pohl, during the investigations, issued an order to all Kommandants that SS Judges were to be permitted to enter the concentration camps only with his express approval?

The Prosecution has not attempted to shake the testimony of Dr. Morgen on this essential point of secrecy. It apparently cannot do so although it apparently is in the possession of all files of the WVHA and propably also those of the main office SS courts, since it published in a pamphlet the text of the testimony of Mrs. Eleonore Hoyds, which she gave to the former investigation Judge, Dr. Morgen, against Hoess, in the fall of 1944. That the prosecution has absolutely no possibility of refuting the testimony of Dr. Morgen, I should like to conclude from the fact that I attempted at one time end my examination of the witness by saying that I was acting in this examination only in favor of the prosecution, but then, in contradiction to this

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did not care for the cross-examination of the witness stating that his evidence had been refuted by all evidence taken before.

No, I do not have the least doubt that the men in charge tried with all means at their command to shroud particularly the crimes in the concentration camps with ever-increasing secrecy - and I believe to be in a position to prove that they succeeded in so doing.

In the case of the mass killings - particular caution is required. In this point the evidence given by the witnesses Hoess, Wisliceny and Morgen are practically in agreement. There did exist special channels of command from the Reich Chancellory to Wirth or from Himmler to Eichmann and Hoess. All three witnesses agreed that only a very few were employed and initiated. For the case Auschwitz, Hoess speaks of 60 men; for the entire complex of extermination Dr. Morgen in Affidavit No. 65 speaks only of a few hundred. Wisliceny also affirms a number of about one hundred for the Eichmann case. The pretense of a mere deportation which was kept up among the Jews and the personnel accompanying them from the beginning until the horrible end and the fact that trustees from among the victims themselves were used made possible the inconceivable; that hundreds and hundreds of thousands were murdered without the external world knowing of it. All witnesses stated that the landscape there is full of space interspersed with the chimneys of factories. I shall not re-enumerate the devilish tricks by which at first the victims themselves, but at the same time the external world and the own people were deceived.

May I also refer to the evidence given by witness von Fadden who, upon command of the Foreign Office, visited camps accompanied by numerous foreigners so that they, and he himself, could be convinced that there was no truth to the rumors about the complaints. Theresienstadt was also visited as example of one planned separate Jewish settlement and, as the witness Hoess said, conditions there were found to be satisfactory. In 1942 there was published in the so-called protectorate a law concerning the formation of a closed settlement Theresienstadt (Document SS-95), Thus, all the world had to assume that the claims concerning deportation were correct.

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Why sould not the SS men, too, who had nothing to do officially with these matters and did not know more than others, fail to believe? Whether the so-called "Umsiedlung", i.e., the deportation constituted a crime as defined by the Charter, this is another question which will be dealt with later.

Above all, one should not forget that all this happened during the war. The masses of the SS men were continually employed at the front. The witnesses Brill and Blume gave the total strength at the end of the war as approximately 580.000.

Entirely occupied by the action in the field they knew nothing of that going on behind their backs. If it was known at all that men in the same uniform served in the concentration camps they felt no inner relationship to them and had no inner or external contacts with them. (Witness Hausser, Affidavit Dille, and Affidavit Steiner.) Most infrequently personnel was transferred from concentration camps to the front.

The fact that there did not exist in Germany any free dissemination of news was necessarily supplemented by a strict prohibition of the import of foreign newspapers and the listening to foreign stations. Generally, the government succeeded with those measures. The official statement that the foreign news services contained nothing but propaganda were believed in the Waffen-SS too, because occasionally enemy news had proven to be incorrect. This the defendant Fritzsche has explained. Finally, this system of prohibitions was supplemented by a well calculated positive German official propaganda. In 1942 Himmler himself declared in a speech before the Junker School Toelz that there were found in the concentration camps mainly criminal elements who, if treated decently

could be educated by positive performance of work into useful members of the people (Affidavits 119-122 von Sauchen). Such a contention had to be believed since the ever-increasing shortage of manpower made it essential to save every human life and to exploit to the utmost all available manpower. Particularly typical in this connection is the affidavit Rothmund (SS Affidavit No. 12) because it shows how expedient this explanation was considered by all authorities concerned since it established confidence. This witness testified that at the end of 1943

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he, in his capacity as assistant to the chief of the SS Personnel Main Office with the RSHA, Amt IV and with the WVHA, Amt's Group D, he had inquired whether the rumors about the killings of Jews were true. He was answered that that was mere enemy propaganda. The WVHA added that the prisoners were indispensible manpower for the armament industry without whom Germany could not get along.

Not even the highest authorities of the Reich were in a position to gain clarity on the true situation. The witness von Thadden has given details how, by a clever playing with truths and untruths Eichmann succeeded to deceive the Foreign Office. The examinations of the Jewish camps by the witness, be it alone or be it in the company of representatives of the protective power or the Red Cross, gave no reason to suspect the mass killings. Eichmann knew to forestall further examinations in those camps where extermination of Jews were carried out by the irrefutable contention that there most secret armament orders were filled, namely, the production of V-weapons and that therefore no access could be given to those camps.

I have, furthermore, given proof that the Gestapo in a reply to official inquiries in 1942 and 1943 told the Ministry of Justice, personified by the expert for the prosecution of rumor mongers Ancin, that the rumors about the extermination of the Jews in the Eastern territories were mere inventions. This affidavit has been rejected by the Commission claiming it did not concern the SS. May I now apply for the admission of this document?

The defendant Fritzsche as a witness has also given a number of clear examples how he, in his high position, did not succeed to obtain a verification of the rumors concerning the

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persecution of the Jews, but that he rather concluded the opposite as a result of his examination.

Nothing has been given as a proof that the mass of the SS knew anything of the activity of the Einsatz Commandos.

To refute the knowledge of the biological experiments in the concentration camps I may point only to the fact which appeared grotesque to me -- that there has taken place here an elaborate taking of testimony on the question

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whether the witness Goering had known of them. I could state that those experiments were carried on only in a few camps, that as proven by various affidavits, they were carried out only after the prisoners had voluntary agreed to them - I am not going to do so because I am not willing to defend them at all, and I do not wish to create such an impression. It is enough to refer to the argument about the knowledge or ignorance of Goering, and the question which has been decided in favor of the unknown SS man. I do not doubt at all that. the carrying through of criminal experiments and their knowledge by the Director of Ahnenerbe, the witness Sievers is charged with guilt, and not his co-workers since those experiements constituted about one percent of its total research program.

I finally would like to quote in regard to the knowledge of those crimes an article which I found in the "Berliner Blaetter" issue No. 1, of 1946. In an article by Oskar Goetz, entitled "The Jew in the Third Reich".

> "The ~~happenings~~ goings in Auschwitz, the other crimes in the death camps of Mauthausen, Maidanek, Ravensvroock, and Buchenwald, we in Theresienstadt, considered only as rumors yes, as only terribly exaggerated rumors. The things that actually happened in Auschwitz, for example, we did not learn authentically in Theresienstadt, before the Spring of 1945 when a few survivors returned from Auschwitz. In the interest of just evaluation of contemporeries one should be factual, and should desire to be factual. No guilty one should go free, but no innocent one should be burdened with guilt. And in the interest of a future calming of the minds more objectivity seems desirable."

I wish that this example of objectivity which was maintained by some one in spite of his having been degraded by the Nazi regime, including the SS, could serve as a model.

If one would now reach the conclusion that apart from a certain definable, or more or less definable group of culprits - witness Dr. Morgen mentioned certain circles of culprits within the concentration camps - the great mass of the SS had no knowledge of the crimes, but that they

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that, however, the majority as well as the rest of the Germans had knowledge of the deportations, that would be considered criminal under Article 60 of the Charter only if it were in connection with a war of aggression. I have already mentioned before that the bulk of the SS were not aware that they waged a war of aggression. This would have been necessary.

Your Honors, President Roosevelt declared in his speech of October 25, 1941, on the occassion of the shooting of hostages by German forces of occupation that civilized nations for a long time upheld the principle that none should be punished for the deeds of another person. Justice Jackson has declared on February 28, 1946, that the aim of declaring the organizations criminal is to punish assistance in these crimes, though the real authors could never be found, nor indentified.

Can they really not be found? Is the contrary not proved by the great number of trials, which I just mentioned before, for concentration camp crimes before Allied military courts, which pronounced 153 death sentences, out of 241 defendants? Does the prosecution still maintain that they have not yet found the real authors, though for more than a year all persons who had anything to do with the concentration camps are under arrest, and though all detainees are today grouped in organizations and are at any time at the disposal of the Tribunal as witnesses? All files and documents, too, are in the hands of the Allies.

Despite that and despite the discrepancy of these two quotations (Roosevelt, Jackson), I shall place myself for a moment in the point of view of the prosecution by assuming that such a collective criminality exists.

Then within its framework the principle still stands that none shall be held responsible for a crime which he did not commit. It means that in this case, too, the group of accused should be limited as much as possible.

This limitation can be made in two ways, either separately or combined.

1) The degree of responsibility, that is, the position or the rank held in office.

2) The subdivisions of the whole organization known as SS. The prosecution has to my knowledge already made this limitation in their Charge against the Party and the governments. From the Party the political leaders only and from the executives of the German state, the Reich Cabinet only are put on trial.

As for the limitation of responsibility a line must be drawn between moral and legal responsibility. The question must be asked, what each individual in his respective office position should have done if he committed a crime upon order or only if he came to know about it and what could reasonably be expected from him.

As for the limitation of the subdivisions of the whole organization, it can be justified by the fact, which I have thoroughly explained, that these groups had very definite and separated spheres of activity and differed from each other very much as to the knowledge of activities, perhaps crimes.

A subdivision as to beginning and end of membership, too, would be conceivable and would permit a collective exception of the mobilized members.

But even for a sentence limited in such a way, it seems to me absolutely necessary, in view of the heavy consequences brought about by Law No.10, to insert in the formula of the verdict or the reasons given for the verdict that each individual member would have the possibility of appeal, except against provisions of Law No.10.

At last I want to draw attention to a procedural obstacle to the verdict which has been demanded: The meaning of the additional sentencing of a member of an organization as an individual belonging to this organization seems to me the following, according to Article 9: An organization shall be held responsible for the acts of an individual defendant who is its member only if between the acts of this individual defendant and his organization a connection

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exists so that for legal reasons joint liability of the organization is considered necessary. Such a connection exists only if the individual defendant committed the deed as member of the organization, may it be that by doing so he fulfilled the aim of the organization, or that he used the organization for its commitment. On February 28, 1946, Justice Jackson stated: "Individual defendants, at least one of them, must have been members of the organization, and must have been sentenced for a deed by which the criminality of the organization has been ascertained."

In the case of the organization of the SS, which I represent this means:

An SS organization can be declared criminal only if one of the defendants belonged to it, and was sentenced for crime which he has carried out either through the organization, or which is to be considered as reciting from the aims of the organization, and has been performed in their realization.

With one exception about which I am going to speak, yet, all the defendants stand before this High Tribunal for acts, which they have performed as the chiefs of important state or Party offices and which they carried out in the fulfilment of their task there, but not offices of the SS.

The fact that a few of the defendants were holding honrary ranks in either one of the SS organizations, is not enough to consider the SS organizations responsible for deeds for the carrying out of which they were not responsible and in which they did not share.

The defendant, Kaltenbrunner, could be one exception. He is indicted in his capacity as chief of the Security Police, that is, the criminal police and Gestapo, and the SD. Also for those deeds which were carried out by the SD. By that the SS could also be burdened with guilt. The Criminal Police is not indicted. The Gestapo is indicted as such. The indictment of the SD also must be considered as an independent one. It is true that it was connected originally

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with that against the SS, but soon the SD got its own defense counsel and throughout the whole proceedings, it was treated independently. Since 1934 SD and SS were seperated. Sentencing of Kaltenbrunner, therefore, would if at all give only a formal basis for the sentencing of the organizations, the Gestapo and the SD, but not at all of the SS.

As far as the method of the proceedings are concerned, I might point out that none of the defendants concerned was ever asked whether and how far he committed his deeds, for the SS or as a member of the SS. This appears to me as a short comment.

High Tribunal, I said in the beginning that this trial was a most gigantic criminal trial - but still a criminal trial, yet. And therefore I venture to ask now, what purpose from the standpoint of legal policy could and would a sentencing serve? And I am to receive the traditional answer, retaliation and threatening.

Certainly it is necessary to put a threat before the German people, and the former Nazi formations, but also before the peoples of all the world which might ever be tempted to turn to dictators, or anti-Democratic methods, and to make them face the severe consequences of the violation of international law, the new universal law now incorporated within the Charter. This trial should be the last warning to those who do not heed the demands of the world, and of all their peace loving citizens, for freedom of speech and religion, for freedom from want and fear. The war, the terrible consequences of the defeat, the detention of hundreds of thousands beyond the being of prisoners of war, the painful months of the proceedings here, the political investigations and occupational limitations - all these are such impressive and threatening effects that they shall have for all these consequences we hope for.

But High Tribunal, one thing above all: Your armies have freed Germany from the tyranny of Nazis ; now will you free the world from the curse of retaliation. The world can recover only when <u>once</u> there will be made an end to the hateful slogans directed against races, nations, classes, or parties.

I say this, so I know that there will be many SS men just as there will be many on the side of the Allies, who will not understand the meaning of my words.

But they, too, sometime to come will recognize the eternal truth of the word: "I am here to love and not to hate."

And thus I would like to summarize my defense of the SS.

I accuse everyone of the murderers and criminals who belonged to that organization, or one of its units - and there are more than a few of them.

I acquit the thousands and hundreds of thousands of those who served in good faith, and who therefore share only the moral and metaphysical guilt of the German people, not a criminal one.

But I warn,

I warn the world and its judges against the commitment of mass injustice in legal form, against the creation of a mass of condemned and degraded ones in the heart of Europe, I warn so that the longing of all peoples and men might be fulfilled.

May God bless your judgment.

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Closing Speech - SS (English)

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